HOUSE OF COMMONS
CANADA

ENFORCING CANADA'S POLLUTION LAWS: THE PUBLIC INTEREST MUST COME FIRST!

THIRD REPORT

STANDING COMMITTEE ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

May 1998

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THE STANDING COMMITTEE ON THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

has the honour to present its

THIRD REPORT

In accordance with its mandate under Standing Order 108(2), your Committee undertook a study on the enforcement of the *Canadian Environmental Protection Act* and the pollution provisions of the *Fisheries Act*.

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RECOMMENDATIONS

Recommendation No. 1

The Committee recommends that the Minister of the Environment provide the Committee with complete and itemized information, covering the last five years, on the amounts budgeted and actually expended for inspections, investigations and prosecutions related to the enforcement of CEPA and the pollution prevention provisions of the *Fisheries Act*, at headquarters and in the regions, broken down according to the nature of the expenditures (salaries, operations and maintenance and capital), but excluding funds used for non-enforcement activities, such as compliance promotion. The Committee also recommends that the Minister provide the Committee with detailed information on all additional (non A-base) sources of funding used for the enforcement of these laws, with an indication of whether such funding is still being provided or whether it has been discontinued.

Recommendation No. 2

The Committee recommends that the Minister of the Environment ensure that comprehensive records are kept on enforcement budgets and expenditures, that record-keeping standards be developed in this regard and that such standards be consistently applied both at headquarters and in the regions.

Recommendation No. 3

The Committee recommends that the Auditor General of Canada carry out an audit of the effectiveness of Environment Canada's enforcement program, structures and practices, including the policies and mechanisms related to the determination of enforcement priorities.

Recommendation No. 4

The Committee recommends that the Minister of the Environment provide the Committee with a copy of any report prepared under the review process initiated by the Department in relation to its enforcement program, as well as any action plan developed thereunder.

Recommendation No. 5

The Committee recommends that the Minister of the Environment, in cooperation with the Minister of Fisheries and Oceans, develop and publish

a comprehensive enforcement and compliance policy in relation to the pollution prevention provisions of the *Fisheries Act* within six months of the tabling of this report in Parliament.

Recommendation No. 6

The Committee recommends that the Minister of the Environment update and publish a revised CEPA Enforcement and Compliance Policy within six months of Royal Assent being given to Bill C-32, the proposed new Canadian Environmental Protection Act, 1998.

Recommendation No. 7

The Committee recommends that:

(a) the Minister of the Environment undertake a comprehensive review of the regulations passed under CEPA and section 36 of the *Fisheries Act* to ensure that they are adequate, up-to-date and enforceable;

(b) the Minister of the Environment rewrite all regulations found to be deficient to ensure their enforceability;

(c) the Minister of the Environment actively include and involve the enforcement personnel in reviewing the existing regulations and in developing new ones to ensure that they are enforceable.

Recommendation No. 8

The Committee recommends that:

(a) the Minister of the Environment develop and implement a comprehensive plan of action to ensure that the regulated parties are informed of all of their legal obligations under the federal environmental laws and regulations, and that such laws and regulations continue to apply and must be observed, notwithstanding the terms of any permit issued to them by a governmental authority;

(b) the Minister of the Environment negotiate agreements with the provincial, territorial, Aboriginal, and municipal governments, requiring that they incorporate, in the permits that they issue, an express notification that all federal environmental laws and regulations continue to apply and that compliance with such laws and regulations remains mandatory, notwithstanding any of the terms in the permit.

Recommendation No. 9

The Committee recommends that the Minister of the Environment take the necessary steps to have selected CEPA offences designated for the purposes of the ticketing provisions under the *Contraventions Act*.

Recommendation No. 10

The Committee recommends that the new CEPA legislation (Bill C-32) be amended to enable inspectors and investigators to be designated as, and given the full powers, of a peace officer.

Recommendation No. 11

The Committee recommends that CEPA inspectors and investigators not be authorized to carry firearms.

Recommendation No. 12

The Committee recommends that the Minister of the Environment establish without delay a professional intelligence gathering and analysis capacity within the Department, using adequate resources.

Recommendation No. 13

The Committee recommends that the Minister of the Environment, in negotiating partnerships with other departments or agencies such as Canada Customs and the RCMP, ensure as a matter of priority that adequate resources and mechanisms are put in place to enable the parties to effectively discharge their obligations and responsibilities.

Recommendation No. 14

The Committee recommends that:

(a) the Minister of the Environment revise the Department's current structure to establish an independent centralized enforcement agency, with regional branches, that would report directly to the Minister of the Environment;

(b) in setting up an independent centralized enforcement agency, the Minister of the Environment ensure that enforcement decisions are not made by officials having managerial functions and responsibilities in areas other than enforcement;

(c) the Minister of the Environment take the necessary steps to ensure that the independent enforcement agency acquires the status of an investigative body and that it be designated as such for the purposes of the *Access to Information Act*.

Recommendation No. 15

The Committee recommends that the Minister of the Environment provide the enforcement personnel with comprehensive training programs on a continuing basis to assist them in carrying out their duties.

Recommendation No. 16

The Committee recommends that the Minister of the Environment, in negotiating environmental agreements with the provincial, territorial and Aboriginal governments:

(a) ensure that it retains full authority and accountability, as well as the appropriate means and resources to enforce CEPA and the pollution prevention provisions of the *Fisheries Act*;

(b) ensure that efficient and transparent mechanisms for monitoring, reviewing, reporting and resolving disputes are included in the agreements so that the parties are compelled to fulfill their commitments and obligations.

Recommendation No. 17

The Committee recommends that:

(a) the Auditor General of Canada carry out with all due dispatch the environmental audit that he has agreed to conduct in relation to the effectiveness of the bilateral environmental agreements between the federal and provincial/territorial governments; and

(b) the Minister of the Environment delay the signing of the proposed Sub-agreement on Enforcement under the Canadian Council of Environment Ministers' harmonization initiative until the Auditor General's report has been tabled in Parliament.

Recommendation No. 18

The Committee recommends that:

(a) the Minister of the Environment be responsible for publishing all enforcement data relating to the laws and regulations that Environment Canada is mandated by law or agreement to enforce, such as data respecting the enforcement of CEPA, the pollution prevention provisions of the *Fisheries Act* and the provisions of the *Manganese-based Fuel Additives Act*;

(b) the Minister of the Environment be required to publish and table before Parliament a detailed annual report on the enforcement actions taken in the previous year in relation to all laws and regulations that Environment Canada is mandated by law or agreement to enforce, identifying the type of action taken (inspections, warnings, prosecutions, etc.), the party in relation to whom the action was taken, the date and place where the action was taken, the status of the case and its outcome, where applicable;

(c) the Minister of the Environment also be required (i) to publish detailed information on all cases of suspected violations reported to Environment Canada officials, in relation to which no enforcement action had been taken at the time the cases were closed; and (ii) to set out the reasons why no action was taken in these cases;

(d) the Government of Canada introduce the necessary amendments to the relevant legislation, such as the *Fisheries Act* and the *Manganese-based Fuel Additives Act*, transferring the enforcement reporting responsibility to the Minister of the Environment.

Recommendation No. 19

The Committee recommends that the Minister of the Environment put in place appropriate structures, mechanisms and funding to facilitate the collaboration of all interested parties concerned with the environment, such as organized labour, Aboriginal peoples, environmental groups, management and members of the public, to encourage and facilitate their communicating to the appropriate environmental authorities any knowledge or information on cases of potential or confirmed non-compliance with environmental laws and regulations.

Recommendation No. 20

The Committee recommends that the Government of Canada enact comprehensive whistleblower protection in all applicable federal environmental legislation.

Recommendation No. 21

The Committee recommends that the Attorney General of Canada, in cooperation with the Minister of the Environment, develop and publish a detailed policy statement on private prosecutions involving federal environmental offences. Specifically, this policy statement should define the role of the private complainant when the prosecution is taken over by the Crown and the reasons why it would be in the public interest to suspend the proceedings or otherwise settle the case out of court.

Recommendation No. 22

The Committee recommends that the Minister of the Environment direct Environment Canada to include the full economic benefits of regulatory action in all cost/benefit analysis made in relation to the development and implementation of regulatory solutions to environmental problems.

Recommendation No. 23

The Committee recommends that the Minister of the Environment seek, and that the Government of Canada grant more resources to ensure the proper enforcement of the environmental legislation.

Recommendation No. 24

The Committee recommends that the Minister of the Environment conduct an in-depth study to determine whether methylmercury released into the aquatic environment as a result of the creation of reservoirs should be regulated under CEPA.

INTRODUCTION

1. This report is produced at a time when the effects of budget cuts both at the federal and provincial level are being felt while a wealth of legislation remains on the books.

2. In addition, this report is being written when a new and massive piece of legislation is making its way through the legislative system: Bill C-32, the new Canadian Environmental Protection Act, 1998.[1] The members of this Committee want to ensure that the faith of Canadians in their environmental legislation is properly and adequately placed.

3. As governments reduce their role, a trend toward voluntary compliance and other alternative approaches has emerged. While some results have been achieved, it must be noted that a multitude of substances, many toxic, have been introduced into the environment. Furthermore, the increasing number of human activities, the substantial economic gains to be made from unsound or unlawful environmental practices in the context of global competition and the constant threat posed by poorly managed wastes, have resulted in constant pressure on our ecosystems.

4. Although there are a large number of industries which behave as highly responsible citizens, unfortunately the actions of many irresponsible operators negate the worthy results achieved by the former. This is why it is essential for parliamentarians to examine and review the state of enforcement of existing legislation from time to time and to ensure that effective and wide-ranging compliance is being achieved. Thus, the Government of Canada should transform its commitment to sustainable development into action, for the benefit of Canadians and the quality of their natural resources.

5. The Committee was also interested in studying enforcement because of the harmonization initiative currently being carried out by the Canadian Council of Ministers of the Environment (the CCME). This initiative has been of particular concern to the Committee because it seeks to reassign, by administrative agreement, the functional responsibility for Canada's environmental laws to one or the other level of government.

6. The first phase of the CCME's harmonization initiative, consisting of a main Accord and three of ten proposed sub-agreements, was completed and signed by the Ministers of the Environment on 29 January 1998. The sub-agreement on enforcement is among the seven sub-agreements that had not been developed. It is, however, scheduled to be completed during the current, second round of negotiations. The Committee therefore

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1 Bill C-32, An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development (short title: the Canadian Environmental Protection Act, 1998) was introduced in Parliament on 12 March 1998 and received second reading on 28 April 1998.

thought it would be useful to undertake this study on enforcement to see if recommendations ought to be made before the sub-agreement on enforcement is finalized and ratified.

7. It also seemed a good opportunity to obtain a progress report on the recommendations that the Committee (as it then was) made in its 1995 report on the review of the *Canadian Environmental Protection Act* (CEPA). This report, *It's About Our Health! Towards Pollution Prevention*, contained 141 recommendations for change, at least 10 of which dealt with enforcement matters. Obtaining a progress report on these recommendations therefore seemed timely. The Committee was also concerned about continuing accounts indicating that the federal pollution legislation was not being enforced.[2] We were interested in finding out why enforcement action had not been taken in these cases and whether the lack of enforcement action was in any way connected to the deep cuts recently made to Environment Canada's budget.

8. By motion adopted on 5 February 1998, the Committee thus decided to carry out a study on the enforcement of the *Canadian Environmental Protection Act* and the pollution prevention provisions of section 36 of the *Fisheries Act*.

9. The Committee held public hearings on the enforcement of this environmental legislation between 18 February and 26 March 1998. We heard from a variety of witnesses, including representatives from industry, specifically the pulp and paper sector, Aboriginal peoples, labour, environmental groups and government officials. The Committee wishes to thank the witnesses who appeared before it, including the Minister of the Environment who appeared on 25 February. The Committee is especially indebted to the enforcement officials from the five regions and the national Office of Enforcement, who shared their practical knowledge and invaluable insights with the Committee.

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2 See, for example, the article published in the *Globe and Mail* on 26 January 1998, entitled "Pollution Cases Not Prosecuted."

ENVIRONMENT CANADA'S ENFORCEMENT RESPONSIBILITIES

A. The Legislative Framework

1. The Canadian Environmental Protection Act

10. Environment Canada administers the *Canadian Environmental Protection Act* (CEPA), the principal piece of federal legislation for protecting the Canadian environment. Passed in 1988, CEPA replaced the *Environmental Contaminants Act* and incorporated the provisions of the *Clean Air Act*, the *Ocean Dumping Control Act*, the nutrient provisions of the *Canada Water Act* and selected provisions of the *Department of the Environment Act*.

11. CEPA provides the federal government with broad authority to control all aspects of the life cycle of toxic substances, from their development, manufacture and importation through to their ultimate disposal as waste. It also enables the federal government to control the introduction of substances new to Canada; regulate products of biotechnology, fuels and fuel components; set concentration limits for nutrients, such as phosphates, in cleaning agents and water conditioners; regulate the import and export of toxic substances and other waste material; control the disposal of waste at sea through a permit system; take specified action in cases of international air pollution; adopt environmental guidelines and regulations in relation to federal property and operations; and develop environmental quality objectives, guidelines and codes of practice.

12. At present, 26 regulations have been promulgated under CEPA, dealing with such things as PCBs, CFCs, dioxins, furans, fuels, new substances and ocean dumping.

2. The Fisheries Act

13. Under a memorandum of understanding signed in 1985 by Environment Canada and the Department of Fisheries and Oceans,[3] Environment Canada is also responsible for administering and enforcing the pollution prevention provisions under section 36 of the

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3 Although the most recent memorandum of understanding between Environment Canada and the Department of Fisheries and Oceans was signed in 1985, Environment Canada assumed responsibility for the enforcement of section 36 of the *Fisheries Act* some years earlier, when the two departments were part of the same ministry of Fisheries and Forestry. In 1971, the Assistant Deputy Ministers of the former Fisheries Service and the Environmental Protection Service within the Department of Fisheries and Forestry signed an agreement whereby the Environmental Protection Service would assume responsibility for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*. This agreement, confirmed by letter of the Prime Minister in 1978, was carried forth when the Department of Fisheries and Oceans and Environment Canada were established as separate ministries. The agreement has since been renewed in the 1985 memorandum of understanding referred to above.

Fisheries Act. This section prohibits the direct or indirect deposit of deleterious substances in waters frequented by fish (referred to as the "general prohibition" under section 36(3) of the *Fisheries Act*). Section 36 also authorizes the development of regulations permitting the deposit of prescribed deleterious substances into waters frequented by fish (section 36(4) and (5)).

14. At present, six regulations have been promulgated under section 36 of the *Fisheries Act.* When these regulations are added to the 26 regulations developed under CEPA, a total of 32 regulations must thus be enforced by Environment Canada.

15. It should be noted that, under the memorandum of understanding, Environment Canada did not acquire responsibility for administering and enforcing section 35 of the *Fisheries Act*. This section prohibits any work or undertaking from being carried out that would result in the harmful alteration, destruction or disruption of fish habitat, unless otherwise authorized by the Minister of Fisheries and Oceans or the regulations. The administration and enforcement of section 35 has remained with the Department of Fisheries and Oceans. The lines of authority between sections 35 and 36 of the *Fisheries Act* are not always clear, however, since it is possible to harm fish habitat through the deposit of deleterious substances.

3. Equivalency and Administrative Agreements with the Provinces and Territories

16. Section 34(5) of CEPA authorizes the Minister of the Environment to sign "equivalency agreements" with the provinces and territories in relation to a CEPA-toxic substance. The following conditions, however, must first be met: the province or territory must have enacted "equivalent" provisions to the federal regulation or regulations covered by the agreement, and it must have in place a citizens' complaint and investigation mechanism similar to the one prescribed in sections 108 to 110 of CEPA. Except as regards matters relating to the federal Crown, equivalency agreements suspend the application of the relevant CEPA regulation(s) within the signing province or territory, thus enabling the equivalent provincial/territorial measure to apply instead.

17. Section 98 of CEPA further authorizes the development of "administrative agreements" with the provinces and territories. These agreements are intended to be work-sharing partnerships that allow the federal and the provincial and territorial governments to share the work of administering the regulations and provide a one-window approach to industry. They can cover such activities as inspection, enforcement, monitoring and reporting, but do not release the signatories from their respective spheres of authority.

18. Along with the negotiation of equivalency and administrative agreements under CEPA, Environment Canada and the Department of Fisheries and Oceans have also

negotiated administrative agreements with the provinces and territories respecting the pollution prevention provisions of the *Fisheries Act*. In contrast to CEPA, there is no specific authority for the negotiation of such agreements under the *Fisheries Act*. The general authority of the Minister of Fisheries and Oceans under section 5 of the *Fisheries Act* has been used instead.

19. There are seven federal-provincial/territorial agreements currently in force. Three of these agreements were developed under CEPA, namely:

- the Agreement on the Equivalency of Federal and Alberta Regulations for the Control of Toxic Substances in Alberta;
- the Canada-Saskatchewan Administrative Agreement for the *Canadian Environmental Protection Act*; and
- the Canada-Yukon Environmental Protection Agreement.

20. The following two agreements were developed under the *Fisheries Act*:

- the Canada-Alberta Administrative Agreement for the Control of Deleterious Substances; and
- the Canada-Saskatchewan Administrative Agreement for the Control of Deleterious Substances.

21. The sixth agreement, the Agreement between the Government of Quebec and the Government of Canada in the Context of the Application in Quebec of Federal Pulp and Paper Mill Regulations, applies to pulp and paper mill regulations developed under both CEPA and section 36 of the *Fisheries Act*.

22. The Canada-Northwest Territories Framework Agreement for Environmental Cooperation in the Northwest Territories is the seventh agreement. In contrast to the others, this agreement does not explicitly derive from either CEPA or section 36 of the *Fisheries Act*. It is a general framework agreement that calls for the maintenance and improvement of current levels of environmental protection through cooperative efforts.

B. Enforcement Personnel and Enforcement Action

23. CEPA and the pollution prevention provisions of the *Fisheries Act* are enforced by federal enforcement officers or provincial/territorial enforcement officers under applicable bilateral agreements. CEPA recognizes only one level of enforcement officer for the purposes of the Act, that of "inspector." In practice, however, inspectors may carry out various functions. Some inspectors conduct inspections to verify compliance, others do both inspections and investigate offences, while others specialize in investigations.

24. As a rule, the CEPA enforcement officers do not engage in what is referred to as "compliance promotion." Compliance promotion seeks to secure conformity with the law through a variety of information and education programs, including the promotion and transfer of "cleaner" technologies, the use of environmental audits and consultation with the client industries on the development of regulations, guidelines and codes of practice. The primary responsibility for compliance promotion activities rests with the so-called "program branches."

25. Environment Canada has five regional offices: the Atlantic Region, the Quebec Region, the Ontario Region, the Prairie and Northern Region and the Pacific and Yukon Region. Each region is headed by a Regional Director General, assisted by Regional Directors. The Regional Directors for Environmental Protection are ultimately responsible and accountable for all enforcement decisions in their territory. These regional officials consult with the Office of Enforcement, at national headquarters in Hull, Quebec. Set up to ensure national consistency and uniformity, the Office of Enforcement is to be consulted on all enforcement decisions made by the regions and is to be a party to regional discussions on all enforcement measures. However, it is a strictly advisory body with no line authority over regional enforcement personnel. In collaboration with the regions, the Office of Enforcement also develops the National Enforcement Plan, which sets out the national enforcement priorities for the upcoming fiscal year.

26. The national Office of Enforcement employs 22 staff, while, as indicated in the chart below,[4] there are 60 enforcement officers employed in the regions, 11 of whom occupy managerial positions.

REGION	CHIEF/HEAD	FIELD INSPECTORS	FIELD INVESTIGATORS	TOTAL
Atlantic	1	4	4	9
Quebec	1	5	2	8
Ontario	2	8	5	15
Prairie and Northern	4	6	2	12
Pacific and Yukon	3	9	4	16
Total	11	32	17	60

27. When an infraction occurs, charges may be laid and a prosecution undertaken, but this option is usually pursued only in response to the more serious offences. For the less

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4 This chart was prepared by the Office of Enforcement on 28 January 1998.

serious offences, a written "warning" may be issued. Inspectors may also issue a "direction" in emergency situations involving the unlawful release of specified substances.

28. According to the published data for the period 1996-1997, 701 inspections were carried out under CEPA, and 53 investigations were conducted. Two directions and 28 warning letters (2 against the government) were issued, 5 prosecutions were instituted, 7 convictions were registered (some cases had been started in previous years), and there were 4 acquittals or withdrawn charges. The enforcement data regarding the pollution prevention provisions of the *Fisheries Act* for the same period indicates that there were: 778 inspections, 25 investigations, 1 direction, 8 warnings (all of which were against non-government offenders), 5 prosecutions and 6 convictions.

THE NEED FOR EFFECTIVE ENFORCEMENT

29. Canadians want a safe and clean environment. This has been demonstrated time and again in the public opinion polls. One recent survey, conducted by Environics in 1997, indicated that 73% of the respondents would choose environmental protection ahead of economic progress.[5]

30. Based on the evidence before it, the Committee concludes that Canadians are not getting the high level of environmental protection that they expect and deserve. A number of problems precluding effective enforcement were brought to the Committee's attention. One major impediment concerns the lack of both human and financial resources to meet the challenges of an ever-increasing workload.

1. Limited Resources

31. Under the federal government's program review, Environment Canada has had to reduce its overall budget by approximately 40%. Despite these deep cuts, senior officials at the Department assured the Committee that the enforcement budget had remained stable.[6] Other witnesses, however, painted a grimmer picture. There was the suggestion that the funds allocated to the enforcement function were not always used for that purpose. The Committee was also told that existing, limited budgets were shrinking further since some sources of funding, external to the enforcement budget but nonetheless used for enforcement purposes, were being terminated. Notably, the now expired Green Plan, launched by the federal government in 1991, was supposed to have injected an additional $39.3 million over a six-year period to enhance enforcement activities under the Department's Conservation and Protection program.[7]

32. One example of the effects of the Green Plan's expiry was provided by Peter Krahn, Head of the Inspections Division for the Pacific and Yukon Region. He told the Committee that, as of April 1, 1998, he expected to lose 38% of his operational capacity due to the termination of the Fraser River Action Plan, created under the Green Plan. He stated:

> On April 1, 1998 as a result of the Fraser River Action Plan coming to an end, I will lose $300,000 from my inspection budget for a drop of 30%. The investigations budget will drop from $346,000 down to $255,000. That comes mostly out of [Operations and Maintenance], not salaries, so I will be losing 38% capacity. [...] With respect to the

5 *The Ottawa Citizen*, 18 February 1997.

6 Environment Canada, Brief to the Committee, 18 February 1998, p. 5.

7 Environment Canada, *1992-1993 Main Estimates, Part III, Expenditure Plan*, p. 3-51.

> ability to inspect, our average is about 550 inspections per year. So I would expect that to drop down to about 385. At any given time, we have 25 investigations in progress, on average, so that would drop down to about 15.[8]

33. When later contacted by telephone,[9] Mr. Krahn was able to update this information, although he remarked that budget conditions were constantly in flux as senior managers adjusted their programs and work plans. He indicated that, with the termination of the Fraser River Action Plan (FRAP), together with the addition of selected administrative costs which his division now had to absorb, his operations and maintenance budget had dropped from $313,000 to $87,000 from the previous to the current fiscal year (an overall reduction of 72%), while salaries had dropped from $710,000 to $631,999 (an overall reduction of 11%). He added that this 11% reduction would have been 24% had he not been alloted an additional $23,999 for salaries the day before. In order to make up the shortfall, Mr. Krahn stated that he would convert salary dollars to his operational budget by not filling in his own vacant position while he was employed as acting Head. Nor would he backfill two vacant positions, one of which was pending and the other of which had just recently been vacated due to the termination of the FRAP, but which would not entail salary dollars as the funding for this position had expired. He also was considering converting further salary dollars for his operational budget by assigning his forensic computer analyst/inspector to Ottawa and by not hiring co-op students until at least next fall.

34. In a written submission to the Committee the Department indicated in turn that the Quebec Region had an enforcement budget of $1,329,000 for the 1997-1998 period.[10] However, Claude Gonthier, Chief of Inspections and Investigations for the Quebec Region, informed the Committee that only 60%[11] of this amount was actually used for enforcement purposes, namely, $600,000 for salaries and $115,000 for operational requirements.[12]

35. The Department's written submission also indicated that there were only eight full-time enforcement officers for the entire Quebec Region. The Pacific and Yukon Region, with a similar budget, had 16 full-time enforcement officers. When questioned about this the Department responded, in supplementary written information that the number given for the Quebec Region did not include existing vacancies. It stated that there were three vacant but funded enforcement positions in the Quebec Region and that a fourth position had been identified, for a full complement of 12. It also pointed out that upon closer scrutiny, the staff allocation for the Pacific and Yukon Region had been overestimated and that the full complement was in fact 15 rather than 16.

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8 Evidence, Meeting No. 38, 26 February 1998, at 9:35.

9 Telephone conversation of 5 May 1998.

10 Environment Canada, Brief to the Committee, 18 February 1998, p.6.

11 The official transcript of evidence mistakenly states "16%" instead of "60%," which is the correct figure.

12 Evidence, Meeting No. 37, 25 February 1998, at 16:40.

36. The Committee has since found out that the existing vacancies in the Quebec Region have gone unfilled for at least two years and maybe more. That such essential positions have been left vacant for such a lengthy period of time is appalling, in the Committee's opinion. Quebec is among Canada's most industrialized provinces, in particular it has the largest number of pulp and paper mills in the country. That Environment Canada should be operating in the province with less than its full allotted enforcement complement is incomprehensible in our view.

37. The Committee is also deeply concerned about the quality of information supplied by the Department. The Committee notes that the foregoing information is at odds with the information supplied earlier to the Committee by the Office of Enforcement in chart form (set out earlier in this report). The chart indicates that on 28 January 1998, there were a total of seven inspectors and investigators for the Quebec Region. The Pacific and Yukon Region, in turn, had a total of 15 inspectors and investigators, only 12 of whom, however, were dedicated to enforcement. The remaining three, it seems, were dedicated to emergency response.

38. Given these discrepancies, the Committee finds that it cannot rely on the official data that was provided to determine how many enforcement officers are directly responsible for conducting inspections and investigations under CEPA and the pollution prevention provisions of the *Fisheries Act*.

39. In a continuing effort to get a clear understanding of how many resources were budgeted and in fact used for enforcement purposes, the Committee, on 20 March, finally requested in writing that the Department supply it with a detailed breakdown of the enforcement expenditures over the last five years. The ensuing data, received by the Committee on 28 April proved to be less than satisfactory. The Department indicated that complete records were unavailable for the 1992-1993 period, thus preventing any comparative analysis from being made. Given that public funds were being expended, the Committee is alarmed that the relevant data could not be obtained. The Department further indicated that funds used for the federal stewardship initiative in the National Capital Region were included in the enforcement expenditures for 1996-1997. How the federal stewardship program could be considered an enforcement expenditure is not only puzzling to the Committee, it also puts into serious question whether the data provided applies only to enforcement expenditures, as was requested, or whether it also covers other activities, such as compliance promotion, laboratory expenditures, legal fees for prosecutions, support staff and management functions. The Department also included data on the expenditures for wildlife protection, even though the focus of this study was specifically on the enforcement of CEPA and the pollution prevention provisions of the *Fisheries Act*.

40. The Committee had hoped to shed some light on the amount of money actually used for enforcement purposes, excluding compliance promotion and other activities.

Consequently, it prepared a number of tables for Environment Canada officials to fill out, indicating such things as the number of inspection positions budgeted for, and operative since, fiscal year 1993-1994. Department officials indicated, however, that the requested information was either not readily accessible at headquarters or was not available at all because the kind of records at issue had not been kept over the years or they were not uniformly kept from one region to the next, as no record-keeping standards had been set.

41. The Committee is at a loss to understand why the Department does not have comprehensive, standardized and readily accessible data on enforcement budgets and expenditures. Without this basic information, it is difficult to see how the Department can evaluate its enforcement program and determine whether or not changes have to be made.

42. Based on the limited and possibly inaccurate information provided, the Committee has been unable to draw any useful conclusions on this matter or assess funding trends. The Committee is nevertheless intent on getting accurate figures on enforcement budgets and spending and makes the following recommendations:

Recommendation No. 1

The Committee recommends that the Minister of the Environment provide the Committee with complete and itemized information, covering the last five years, on the amounts budgeted and actually expended for inspections, investigations and prosecutions related to the enforcement of CEPA and the pollution prevention provisions of the *Fisheries Act*, at headquarters and in the regions, broken down according to the nature of the expenditures (salaries, operations and maintenance and capital), but excluding funds used for non-enforcement activities, such as compliance promotion. The Committee also recommends that the Minister provide the Committee with detailed information on all additional (non A-base) sources of funding used for the enforcement of these laws, with an indication of whether such funding is still being provided or whether it has been discontinued.

Recommendation No. 2

The Committee recommends that the Minister of the Environment ensure that comprehensive records are kept on enforcement budgets and expenditures, that record-keeping standards be developed in this regard and that such standards be consistently applied both at headquarters and in the regions.

2. An Ever-Increasing Workload

43. In its 1995 report on the review of CEPA, the Committee raised a number of concerns in relation to the scarcity of resources. At that time, Environment Canada employed a total

of 31 inspectors and 28 investigators in the regions. Based on the chart provided by the Office of Enforcement (set out earlier), today there are 32 inspectors and 17 investigators, for an overall loss of 11. The number of enforcement personnel has thus declined since 1995, but the same cannot be said of the regulatory burden. Several new regulations have been passed since the Committee carried out its review of CEPA in the 1994-1995 period. Furthermore, several other enforcement responsibilities, unrelated to the regulations, have been added to the list. The enforcement staff has recently become responsible for enforcing the *Manganese-based Fuel Additives Act*, which came into force in 1997. It is also responsible for overseeing compliance with the National Pollutant Release Inventory (the NPRI), established under CEPA in 1993, but enforced only as of this past year.

44. David Pascoe, Manager of the Emergencies and Enforcement Division for the Ontario Region, described the enforcement challenges in this region, including the challenges of verifying compliance with the NPRI. He told the Committee that verifying compliance with the NPRI took 2 inspectors up to 4 or 5 days per company, and that there were about 1,000 companies which had to be inspected in this regard. He stated:

> With respect to the National Pollutant Release Inventory in Ontario, we're not quite sure how many people that applies to, but right now, as far as we're concerned, it's over 1,000. It's into its first year of enforcement this year. We issued close to 90 warning letters for late reporting. An inspection of a reporter to the NPRI takes four to five days and involves two people. If you figure that there are 1,000 companies, and nine inspectors just to do that, you can see that it will take several years in terms of having that whole base inspected.
>
> If you add to that the New Substances Notification Regulations, and in Ontario we have at least 500 industries that would be subject to them, that is an extremely complex regulation, and I would say doing the kind of forensic audit required would take at least a week. Okay. You have 500 there, and then for ozone-depleting substances you have the same order of magnitude, and for export and import of hazardous waste, again the same order of magnitude.[13]

45. Peter Krahn, Head of the Inspections Division for the Pacific and Yukon Region, noted the enforcement challenges arising from the changing nature of the regulated parties. As the large point sources of pollution, such as pulp and paper mills, mines, sawmills and heavy-wood treatment facilities, are brought under control, he stated, the enforcement targets will increasingly consist of smaller, more diffuse groups:

> Research under the Fraser River Action Plan determined that smaller, diffuse, non-point sources such as farms, ranches, households with septic systems, development of residential subdivisions, commercial areas, transportation routes and sewage treatment plants have significant if not greater impacts on the discharges of

13 Evidence, Meeting No. 38, 26 February 1998, at 9:25.

> harmful substances. When sources such as farms, ranches and fuel distribution sites are considered the number of inspectable targets which could be subject to federal regulation increases from approximately 5,600 to over 17,200 in British Columbia. [...]
>
> The impact of agriculture and ranching on stream side riparian zones and water quality has resulted in hundreds if not thousands of kilometres of deteriorated stream beds which significantly impair or prevent spawning and rearing of fish.[14]

46. David Aggett, Manager of the Office of Enforcement for the Atlantic Region, pointed out that, in his region, the enforcement of CEPA had been a lot easier when the legislation was first passed. There had been so little enforcement beforehand, he stated, that one could "cherrypick" the violations. Adding, however, that the easy targets started to run out within about two years after CEPA's implementation, he indicated that his office now had to deal with a much more sophisticated level of regulation and a more sophisticated level of criminal activity:

> What you have unfortunately not seen is a dramatic increase in the number of enforcement actions. The reason for that — not the only reason, but the principal — is that now we're dealing with a much more sophisticated level of regulation, a more sophisticated level of criminal activity, if you will.
>
> In the good old days I could go out with my radar and binoculars and catch ocean dumpers any day of the week. It was a matter of taking one or two statements, a couple of photographs, laying charges, and the prosecution getting guilty pleas. Now we're averaging about three search warrants per investigation.[...] So while the investigation numbers are not much better than they were a few years ago, the amount of effort we're investing in them has gone up significantly. But again, that's simply a reflection of the difficulty of doing these investigations.[15]

47. The increased number and complexity of the laws and regulations that have to be enforced, the smaller and more diffuse non-point sources of pollution and, in some cases, the more sophisticated nature of the offender, are placing such demands on the available resources that only the priorities are being dealt with. David Pascoe, for example, indicated that the *Fisheries Act* was not being enforced in the Ontario Region, since certain CEPA regulations were enough to keep his office busy.[16] Claude Gonthier from the Quebec Region was equally candid. He stated that 75 to 80% of the enforcement staff in his region is usually engaged in enforcing five of the ten regulations identified as having the highest priority. He also indicated that in fiscal year 1998-1999, 16 regulations, not considered priorities, would not be enforced at all:

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14 Krahn, Peter, *Enforcement vs. Voluntary Compliance: An Examination of the Strategic Enforcement Initiatives Implemented by the Pacific and Yukon Regional Office of Environment Canada, 1983 to 1998*, p. 18. Draft study presented to the Committee on 25 February 1998.

15 Evidence, Meeting No. 38, 26 February 1998, at 9:45.

16 Evidence, Meeting No. 38, 26 February 1998, at 11:15.

> In the Quebec Region, we enforce 32 acts and regulations. Since there are only five of us [inspectors for the Quebec Region], and we are expecting a sixth person to join us, we must operate strategically, and work according to priorities. In cooperation with headquarters, we set national priorities and then regional priorities when there are problems that we would like to target specifically.
>
> In our region, over the next year, 10 of these 32 acts and regulations will be high priority, some will be medium or low priority, and 16 will not be enforced at all.[...]
>
> Between 75% and 80% of our staff — five people — are assigned to enforcing the five regulations that we think are the higher priorities among the 10. For the year that just ended, they were imports or exports of dangerous waste, the new regulations on new substances, the National Pollutant Release Inventory, the three pulp and paper regulations, and finally, the PCBs and ozone-depleting substances regulations. Eighty percent of our inspection resources are allocated to those six areas. With the level of resources we have, that's the only way we can work.[17]

48. Marc Labossière, Head of Enforcement and Compliance for the Alberta Division of the Prairie and Northern Region, stated in turn that in his region, inspectors carried out all functions because of the vast territory that had to be covered. **Pointing out that his region comprised three provinces and one territory, representing roughly 50% of the Canadian land mass, he observed that the enforcement staff were spread thin and that the challenge for them was to prioritize the workload.**

> Our set-up is a little bit different from the rest of the country. We — and by "we" I mean the same inspectors under CEPA and the *Fisheries Act* — conduct inspections and investigations, respond to environmental emergencies, and are involved in compliance promotions through handing out brochures, information, and that sort of thing.
>
> This arrangement was set up in response to the fact that the region is one of the largest regions in Canada, with 50% of the land mass. Our region is comprised of three provincial jurisdictions and one territorial jurisdiction. Our enforcement offices are located in Winnipeg, Regina, Edmonton, Calgary, and Yellowknife. Approximately 15 inspectors cover this vast area, with most of them covering the three roles of inspection, investigation, and emergency response.
>
> This set-up has its advantages and disadvantages. Its main advantage is the Department's capacity to respond to incidents in such a large area in a financially responsible and expedient way. One downside in this set-up is the pressure on the individual to conduct their work. We are spread thin; the challenge is to priorize our workload.[18]

49. Given that the available resources are being stretched to the limit and only priorities are being dealt with, Environment Canada, not surprisingly, has come under criticism for

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17 Evidence, Meeting No. 37, 25 February 1998, at 16:45.

18 Evidence, Meeting No. 37, 25 February 1998, at 16:50.

its poor enforcement record. Comparing the Department's enforcement record for 1992-1993 with that of 1995-1996, Dick Martin of the Canadian Labour Congress observed that Environment Canada was having less and less of an enforcement presence:

> In 1992-93, for example, there were 1,233 inspections concerning CEPA regulations, with 93 investigations, 105 warnings, 4 directions and 22 prosecutions with 17 convictions. By 1995-1996, the position had deteriorated. There were only 963 inspections, with 94 investigations, 87 warnings, 15 prosecutions with 8 convictions, and no directions issued at all. [...] I would like to suggest to the Committee that the problem is less with prosecutions than with the pattern of Environment Canada's enforcement activity. Clearly, Environment Canada is having less and less of an enforcement presence, but this enforcement presence is the best guarantee that the law will be observed.[19]

50. Similar views were expressed by Paul Muldoon of the Canadian Environmental Law Association. After comparing Environment Canada's enforcement record with that of the province of Ontario before the province drastically reduced its enforcement budget, Mr. Muldoon observed that, conservatively speaking, the provincial enforcement rate for Ontario in terms of convictions had been at least 35 times that of the federal government. In his opinion, the most obvious and perhaps systemic reason for the Department's poor enforcement record relates to what he described as the "virtual abandonment of the federal regulatory capacity itself" in favour of signing voluntary agreements with the various industrial sectors. If Environment Canada continues to rely on voluntary agreements, he warned, less emphasis will be placed on developing regulatory strategies, and as such, less priority and resources will be devoted to enforcement capacity.[20]

51. It should be noted that despite the improvement in compliance levels achieved in some regulated industries, problems of non-compliance remain and could reoccur in the future. Furthermore, the lack of a comprehensive intelligence gathering and analysis capacity at Environment Canada, together with the low number of inspectors and investigators, make it difficult to assess whether unknown problems of non-compliant behaviour or illegal activities might exist in such areas as hazardous wastes, ozone-depleting substances and the pollution prevention provisions of the *Fisheries Act*.

3. The Enforcement Approach

52. Ian Glen, Deputy Minister at Environment Canada, explained to the Committee that compliance was a continuum, which included both compliance promotion activities and enforcement action. Responding to allegations regarding the "non-enforcement culture" within the Department, he admitted there were pressures against taking enforcement action, but denied that there was an anti-enforcement bias within the organization. He stated:

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19 Evidence, Meeting No. 35, 19 February 1998, at 9:15.

20 Canadian Environmental Law Association, Brief to the Committee, 24 February 1998, p. 3.

> There's no doubt from the management perspective there's a challenge. It's not a conflict of roles. It's in essence how you try to progress to the appropriate end point, which is compliance with the requirements of law, and, rising above that, just good corporate commitment — and I say "corporate" in the broadest sense — to maintaining a clean environment. What is the balance there? Are there pressures put on me, as the deputy minister, or on the organization, to try to do things in a non-enforcement way, non-enforcement in the sense of I'll investigate, I'll lead to charges? I don't know, from the political level, but I'm saying surely yes, we do have industry associations, whatever, coming up to us and saying, we want to play ball, back off, work with us.
>
> To the degree that this is an opportunity to advance in a non-narrowly stated enforcement way, I encourage that. We have to encourage it. The reality is if you can get to the end point that way, against the resources we have available in the department, enforcement or elsewhere, we'll try that.[21]

53. Stating that compliance was the final and often the most critical element of an effective regulatory framework, the Canadian Pulp and Paper Association also stressed the importance of using all available options:

> Like enforcement and all other elements of modern environmental regulation, the focus should be on the effective protection of the environment. It should also be recognized that there are a variety of tools available — other than prosecutions — to ensure compliance. Tools such as: mandatory reporting, inspections, promotion of compliance, warnings, remedial action plans. We applaud Environment Canada initiatives to use the 'promotion of compliance' as an effective tool to achieve voluntary conformity with the law.[22]

54. While the Committee agrees that ensuring compliance through voluntary rather than coercive approaches has its place, a majority of the Committee members is concerned that the pendulum may be swinging too far in the direction of voluntary approaches.

55. The study prepared by Peter Krahn, Head of the Inspections Division for the Pacific and Yukon Region, provided convincing evidence of the need for effective enforcement action. These are some of the key findings in his report:

- The industrial sectors which relied solely on self-monitoring or voluntary compliance had a compliance rating of 60% versus a 94% average compliance rating for those industries which were subject to federal regulations combined with a consistent inspection program. Voluntary compliance programs and peer inspection programs could not achieve satisfactory levels of compliance.
- During the compliance promotion phase of a regulation, which may have involved information seminars for the industry, the most progressive members in the target

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21 Evidence, Meeting No. 38, 26 February 1998, at 9:45.

22 Canadian Pulp and Paper Association, Brief to the Committee, 10 March 1998, p. 3.

industry group exhibited a high degree of cooperation and 10% to 15% of the facilities were normally found to be in a reasonable status of compliance.

- Due to the significant liability placed on corporate directors, the follow-up letters issued after a verbal warning or direction often resulted in significant downward administrative pressure to resolve the issue. A total of 80% to 90% of the facilities normally reached a high level of compliance in this phase.
- During the strategic enforcement phase, investigations are undertaken against facilities which have a significant impact on the environment and which have not made improvements or which have not made a reasonable effort to move toward compliance. Search warrants are usually executed and evidence is collected to determine if a prosecution is warranted. Some facilities make the necessary improvements and may avoid prosecution, although avoidance is rare. About 0.5% to 5% of the facilities normally fall within this group.
- Following the investigation, a "prosecution brief" is prepared and submitted to the federal Department of Justice for a decision as to whether or not to prosecute. If a prosecution is approved, charges are laid. About 0.5% to 2% of the facilities in any industry group will normally fall within this group.[23]

56. Surveys of business attitudes, carried out by KPMG in 1994 and 1996, also found support for the proposition that enforcement action provides a better guarantee of compliance than voluntary approaches. Over 90% of the respondents chose compliance with the regulations as the prime motivating factor for implementing environmental improvements, while approximately 70% cited corporate liability. In contrast, only 16% claimed to have been motivated by voluntary programs in 1994, a figure that rose to 25% in 1996.[24]

57. In its 1995 report, the Committee expressed the strong belief that effective and consistent enforcement under CEPA is imperative if the Act is to live up to its objective of protecting human health and the environment.[25] The Committee wishes to reaffirm that belief. The importance of effectively enforcing Canada's environmental legislation is self-evident. Canadians expect and count on their governments to do so. The health and well-being of Canadians, as well as that of the environment, must not be placed at risk through ineffectual enforcement practices.

58. Effective enforcement must also be ensured if Canada is to live up to its international obligations. As a signatory to the North American Agreement on Environmental

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23 Krahn, Peter, *Enforcement vs. Voluntary Compliance: An Examination of the Strategic Enforcement Initiatives Implemented by the Pacific and Yukon Regional Office of Environment Canada, 1983 to 1998*. Draft study presented to the Committee on 25 February 1998, p. 2-6.

24 KPMG Management Consultants, *Canadian Environmental Management Survey*, 1994, and KPMG Management Consultants, *Canadian Environmental Management Survey*, 1996.

25 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, p. 242.

Cooperation (the "environmental side deal" negotiated under the North American Free Trade Agreement (NAFTA)), the Government of Canada has pledged effectively to enforce its environmental laws and regulations through appropriate government action (Article 5). Its failure to do so could prompt one of the contracting parties to cite Canada for a persistent pattern of non-enforcement of its environmental laws, and should the complaint be sustained upon review, Canada could face a stiff monetary penalty (Articles 22-36).

59. The question of Crown liability for failure to enforce the environmental legislation is also of concern. There is a growing body of case law that holds that if there is a regulated standard in place and the public has a reasonable expectation of a given standard of performance, the Crown could be held at least partially liable for any damage caused by its failure to live up to that standard. While no actions have yet been brought against Environment Canada for regulatory negligence, it is not inconceivable that such an action might be brought in future, given the Department's limited resources and selective enforcement practices.

60. In its 1995 report on the review of CEPA, the Committee emphasized the importance for Environment Canada to review its enforcement and compliance activities in order to determine whether its enforcement approach was working. The Committee in fact specifically recommended that the Department set forth performance objectives and develop methods for evaluating effectiveness in order to ensure the effectiveness of its *Enforcement and Compliance Policy* and to establish priorities (Recommendation No. 125).[26] The Committee regrets that this recommendation was not acted upon and that the Government of Canada did not respond to Recommendation No.125 in the response that it tabled in December 1995 pursuant to Standing Order 109.[27]

61. While Recommendation No. 125 was not implemented, the Committee has been informed that, since it began its present study on enforcement, Environment Canada launched a review process. Headed by François Guimont, Assistant Deputy Minister, Environmental Protection Service, this process would review "recent studies of enforcement organizations, existing information and the Committee transcripts in order to find a way to move forward."[28] Although the terms of reference for this initiative had not been finalized when the officials from Environment Canada made their last appearance before the Committee, we were advised that the enforcement personnel, as well as an outside specialist in enforcement matters, would be involved in carrying out the review. We were also informed that this initiative would be given the highest priority and lead to the

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26 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention,* June 1995, p. 246.

27 Government of Canada, *Environmental Protection Legislation Designed for the Future — A Renewed CEPA*, 14 December 1995.

28 Letter of March 19,1998 to the Chairman of the Committee from Ian Glen, Deputy Minister, Environment Canada.

development of an action plan, which, Mr. Guimont indicated, would be very much action-oriented.[29]

62. While the Committee welcomes this initiative and looks forward to receiving a copy of the action plan upon its completion, we are not satisfied that the proposed review process goes far enough. The Committee attaches the greatest importance to effective enforcement and seriously questions whether this goal is being met by the Department's existing enforcement approach. In the Committee's opinion, it is time that this issue be thoroughly examined. The Committee also believes that an unbiased third party, such as the Auditor General, should carry out the review.

Recommendation No. 3

The Committee recommends that the Auditor General of Canada carry out an audit of the effectiveness of Environment Canada's enforcement program, structures and practices, including the policies and mechanisms related to the determination of enforcement priorities.

Recommendation No. 4

The Committee recommends that the Minister of the Environment provide the Committee with a copy of any report prepared under the review process initiated by the Department in relation to its enforcement program, as well as any action plan developed thereunder.

4. Official Enforcement and Compliance Policies for both CEPA and the Pollution Prevention Provisions of the Fisheries Act

63. Along with the enactment of CEPA in 1988, Environment Canada developed an enforcement policy, the *Enforcement and Compliance Policy,* to facilitate compliance with the Act. This document establishes the principles underlying the enforcement function, identifies the enforcement personnel, sets out the various compliance measures and enforcement options at the Department's disposal and generally outlines the responsibilities of Environment Canada and of the officials who enforce CEPA and its regulations. A similar policy, however, has not been developed in relation to the enforcement of the pollution prevention provisions of the *Fisheries Act*, even though Environment Canada was assigned responsibility for enforcing section 36 of that Act well before CEPA was promulgated.

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29 Evidence, Meeting No. 42, 26 March 1998, at 9:40.

64. Patrick Hollier, Chief of the Regulations and Strategies Division within the national Office of Enforcement, informed the Committee that work was currently being done on developing an enforcement policy for section 36 of the *Fisheries Act*.[30]

65. The Committee supports this initiative. Indeed, it is well overdue. In the Committee's opinion, it is as important that Environment Canada inform the public about how it proposes to enforce the pollution prevention provisions of the *Fisheries Act*, including the general prohibition under section 36(3), as it is to inform them of its enforcement policy in relation to CEPA.

Recommendation No. 5

The Committee recommends that the Minister of the Environment, in cooperation with the Minister of Fisheries and Oceans, develop and publish a comprehensive enforcement and compliance policy in relation to the pollution prevention provisions of the *Fisheries Act* within six months of the tabling of this report in Parliament.

66. In its 1995 report, the Committee recommended that the CEPA *Enforcement and Compliance Policy* be revised and updated and procedures be established to ensure that enforcement decisions were made with reference to the updated policy.[31] Again, this recommendation was not acted upon.

67. Bill C-32, the proposed new CEPA legislation, would effect a number of important changes to the existing enforcement provisions in the Act. Given this bill and, as discussed above, the review process currently underway within the Department, the Committee believes that the CEPA enforcement policy should also be updated at this time.

Recommendation No. 6

The Committee recommends that the Minister of the Environment update and publish a revised CEPA Enforcement and Compliance Policy within six months of Royal Assent being given to Bill C-32, the proposed new Canadian Environmental Protection Act, 1998.

5. The Enforceability of the Regulations

68. A further problem precluding effective enforcement concerns the state of the regulations. The Committee was told that some of the regulations currently in force were drafted decades ago and may now be obsolete because, as one enforcement officer put it,

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30 Evidence, Meeting No. 37, 25 February 1998, at 17:15.

31 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No. 125.

"things change." Patrick Hollier, from the national Office of Enforcement, further observed that some regulations were harder to enforce than others, because they were written with less input from enforcement personnel. Given the structure of the regulation itself, he stated, and the rules of evidence, some regulations were simply difficult to enforce:

> Some regulations are harder to enforce than others. Some of them were written with less input from enforcement-knowledgeable people, and therefore, through the structure of the regulations itself and due to evidentiary rules, we have a difficult time enforcing them.[32]

69. Nadine Levin, Senior Policy Officer with the CEPA Office, elaborated further on this point:

> When I was working in the Office of Enforcement as chief of enforcement management, one of the things I did was work with program areas such as commercial chemicals, export and import of hazardous wastes, etc. to draft regulations that would in fact be enforceable. We worked very hard to do that, and many regulations were drafted in an approved manner.
>
> The difficulty is that structurally, the Office of Enforcement provides a role of guidance. If the Office of Enforcement says this particular provision is not written in an enforceable way [...], the Office of Enforcement has no way of imposing enforceability on drafters of the regulations. We present our comments and give out counsel and advice, but the regulation may in fact still be in some ways deficient.[33]

70. The Committee is deeply concerned that enforcement action may be barred because of defective regulations. Ian Glen, the Deputy Minister, also shared the Committee's concern about the non-enforceability of some of the regulations and indicated he was prepared to address the matter.

> What is truly unenforceable from the perspective of [the enforcement staff] is something I want to learn from them. The other is, which ones are difficult to enforce? Leading the same way, can we pull ourselves together and make them properly enforceable? In essence, can we ensure that there's a standard of writing and setting of these regulations so we don't have this dilemma? The answer for me as a manager is yes, we have to take that one on. That was a worrying comment I heard from my colleagues.[34]

71. The Committee is heartened by the Deputy Minister's comments. In our opinion, the problem can be remedied fairly readily and should be at the earliest opportunity, but with the active participation of the enforcement staff, since it is they who have the requisite "hands-on" knowledge to ensure that only enforceable regulations are in fact promulgated.

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32 Evidence, Meeting No. 37, 25 February 1998, at 17:10.

33 Evidence, Meeting No. 37, 25 February 1998, at 17:15.

34 Evidence, Meeting No. 38, 26 February 1998, at 11:15.

Recommendation No. 7

The Committee recommends that:

(a) the Minister of the Environment undertake a comprehensive review of the regulations passed under CEPA and section 36 of the *Fisheries Act* to ensure that they are adequate, up-to-date and enforceable;

(b) the Minister of the Environment rewrite all regulations found to be deficient to ensure their enforceability;

(c) the Minister of the Environment actively include and involve the enforcement personnel in reviewing the existing regulations and in developing new ones to ensure that they are enforceable.

6. Jurisdictional Conflict

72. A further barrier to the effective enforcement of the federal legislation occurs when authorizations or permits granted by another level of government conflict with the federal environmental legislation. These permits or authorizations might allow the release of pollutants into the environment in amounts that would constitute an offence under a federal law or regulation. Offenders, however, are not always prosecuted in such cases because, by reason of the permit or authorization, they can raise the defence of "government-induced error." Since the chances of obtaining a conviction in such cases are questionable, charges may not be laid in the first place, or if they are laid, they may not be proceeded with, or again, they may result in an acquittal.

73. Peter Krahn of the Pacific and Yukon Region provided the Committee with several examples of failed prosecutions. He described one of his cases in the following terms:

> The first example was a private individual who basically created a landfill on his property that ended up leaching into the most productive part of a salmon-bearing stream. He dealt with civic officials, who eventually brought in the provincial officials, and eventually I was called by the mayor and we initiated an investigation. We dealt with almost three months of trial and proved the offence technically, but the interference and the conflicting information given by the other officials in the junior levels of government created a situation called government-induced error, and the judge made a decision that [the accused] had been duly diligent and that it was the confusion of the officials that related to that.[35]

74. A similar incident occurred in the Quebec Region. It involved Kronos Canada Inc. which, along with 2 individuals, had been charged with 15 counts of polluting the St-Lawrence River contrary to section 36(3) of the *Fisheries Act* (the general prohibition

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35 Evidence, Meeting No. 38, 26 February 1998, at 10:25.

against depositing deleterious substances in waters frequented by fish). Since Kronos Canada Inc. had apparently been acting under an authorization given to it by the Quebec government, it was felt that a conviction might not be obtained. Consequently, on the advice of lawyers at the Justice Department, the case did not proceed to trial, and the charges were simply withdrawn.[36]

75. The Committee is alarmed that polluters are escaping prosecution or conviction by reason of government-induced error, especially in cases of serious pollution. A solution to this problem must be found.

76. When asked about the permits recently issued to Geon and GE Plastics in the province of Ontario, which allowed the two companies to increase their loadings of toxic effluent into the Great Lakes, Ian Glen, the Deputy Minister, informed the Committee that a letter had been sent to both companies advising them that irrespective of what the province said and what the permits allowed, the requirements of the *Fisheries Act* still stood and had to be complied with.[37]

77. While this action is welcome, the Committee is deeply concerned that the letters sent to Geon and GE Plastics were not part of a systematic approach to deal with the problem. Rather, they were sent only because the Department became aware of the permitted activities through press accounts. In the Committee's opinion, the Department must take affirmative, systematic steps to ensure that polluters are brought to justice.

78. The Committee supports forewarning potential violators that federal laws still apply, despite the terms of their permits. If a written notification of this kind can place the defence of "government-induced error" beyond the polluter's reach, it is an option worth pursuing. For Environment Canada to do so in all applicable cases, however, would be too labour-intensive, since such a scheme would presuppose a review of all permits issued. As an alternative, the Department should negotiate agreements with the provincial, territorial, Aboriginal and municipal governments, requiring them to include the written notification in the permits that they issue. Given their large numbers, municipal governments might possibly be reached and encouraged to participate through their national association, the Federation of Canadian Municipalities.

79. Giving official notification through the permits, however, is but one means of informing the regulated community of its obligations under the law. A second approach should also be pursued to get the message across. In the Committee's opinion, the Department should develop and implement a plan of action to ensure that the regulated community is made aware of its legal obligations. For example, the Department could actively publicize the matter in the trade magazines, or it might reach the regulated parties

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36 Evidence, Meeting No. 34, 18 February 1998, at 16:40.

37 Evidence, Meeting No. 38, 26 February 1998, at 12:10.

through their representative associations. Whatever means are employed, it is clear that Environment Canada must develop such a plan of action to ensure that these cases do not recur.

Recommendation No. 8

The Committee recommends that:

(a) the Minister of the Environment develop and implement a comprehensive plan of action to ensure that the regulated parties are informed of all of their legal obligations under the federal environmental laws and regulations, and that such laws and regulations continue to apply and must be observed, notwithstanding the terms of any permit issued to them by a governmental authority;

(b) the Minister of the Environment negotiate agreements with the provincial, territorial, Aboriginal, and municipal governments, requiring that they incorporate, in the permits that they issue, an express notification that all federal environmental laws and regulations continue to apply and that compliance with such laws and regulations remains mandatory, notwithstanding any of the terms in the permit.

7. Improved Capacity and Tools

80. Effective enforcement can be achieved only if the enforcement staff have the necessary capacity and tools to carry out their duties. The Committee notes that Bill C-32, the new CEPA legislation, would implement a number of changes in this regard. For example, it would introduce a new enforcement option, termed "environmental protection alternative measures" under the bill (sections 295 to 309). These measures would enable an accused person to negotiate an environmental protection agreement, as an alternative to prosecution. During the life of the agreement, the charges would be suspended against the offender and they could eventually be dismissed by order of the court if the accused was found to have complied with the terms of the agreement.

81. Section 310 of the bill would also reintroduce the ticketing provisions, currently set out in section 134 of CEPA, allowing for a "ticketing" procedure to be used for selected offences designated by regulation. Similar in nature to the regime in place for traffic violations, the ticketing procedure would allow a ticket to be issued against the offender, who would then have the choice of paying the fine set out in the ticket or contesting the charge in court.

82. The ticketing provisions under the current Act were never implemented because they lacked the necessary administrative infrastructure for processing. The lack of

infrastructure was also the reason behind the delayed proclamation of the federal *Contraventions Act*, passed in 1992, which set up a general ticketing regime for designated federal offences. In the case of this legislation, however, the infrastructure problem was resolved through the negotiation of agreements with the provinces and territories, and the Act was proclaimed in force in 1996.

83. As the Committee pointed out in its 1995 report on the review of CEPA, ticketing is a desirable enforcement option for the less serious offences under the Act and should be implemented at the earliest opportunity.[38] Since it may take considerable time for the necessary infrastructure to be set up under the CEPA ticketing provisions, the Committee believes that Environment Canada should make use of the ticketing provisions in the *Contraventions Act* in the interim.

Recommendation No. 9

The Committee recommends that the Minister of the Environment take the necessary steps to have selected CEPA offences designated for the purposes of the ticketing provisions under the *Contraventions Act*.

84. Bill C-32 also proposes to increase the powers of enforcement. For example, it would allow inspectors to issue a "cease and desist" or "stop" order in specified cases, termed an "environmental protection compliance order" in the bill (sections 234 to 271). The proposed enforcement powers, however, fall short of the Committee's 1995 recommendations in at least one material respect. The Committee had recommended that CEPA enforcement officers be given the full powers of a peace officer.[39] We note that Bill C-32 would confer only limited peace officer powers, which moreover would be vested in investigators only and not inspectors.

85. In the Committee's opinion, limiting the peace officers powers in the manner proposed in the bill would put Environment Canada's enforcement staff at a disadvantage. We understand that, operationally, enforcement officers might not be able to use even moderate force in situations requiring the use of force, for example, to prevent the destruction of evidence or, as proposed in Bill C-32, to exercise the new power to stop a moving vehicle. In such situations, the assistance of a peace officer would have to be obtained. This, however, may not always be feasible, particularly in remote areas. Furthermore, peace officers may not always be available when the assistance is needed. Given these and other impediments to effective enforcement, the Committee believes it important that there be authority in CEPA allowing inspectors and investigators to be designated as and given the full powers of a peace officer.

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38 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, p. 246.

39 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No. 131.

86. The Committee, however, is not persuaded that the enforcement officers should be authorized to carry firearms, even though they would possess the powers of a peace officer. We received no submissions in this regard. Until a compelling case for firearms is made, the Committee believes that it would be better to defer this issue to a later date.

Recommendation No. 10

The Committee recommends that the new CEPA legislation (Bill C-32) be amended to enable inspectors and investigators to be designated as, and given the full powers, of a peace officer.

Recommendation No. 11

The Committee recommends that CEPA inspectors and investigators not be authorized to carry firearms.

87. The need for an effective intelligence gathering and analysis capacity within Environment Canada's enforcement program was also forcefully impressed upon the Committee, not only at the hearings on enforcement, but at other hearings as well, notably the hearings on the transboundary movement of hazardous waste[40] and on ozone-depleting substances.[41] At one of these hearings, Earle Warren, Acting Director General, Major Project Design and Development Directorate, Customs and Trade Administration Branch, Revenue Canada, described the difficulties of detecting illicit shipments of hazardous waste across the border and underscored the need for effective intelligence:

> In two years of [Revenue Canada's commercial compliance measurement program], we have yet to uncover an illicit shipment of hazardous waste, which doesn't say that it's not there, because that's quite obvious, but it shows that to a degree you're looking for that needle in the haystack in terms of the number of shipments that may be involved vis-à-vis the number of trucks crossing the border.
>
> Really, from our perspective we believe the success can only come if we have intelligence information. We have sophisticated automated processing systems now. We can target in advance of arrival of the shipment if we know the name of the company, the product that's involved, the exporter that's involved, etc. From our perspective what we really need is that intelligence information so that our targeting systems can select the shipment we need to examine. That's really the gap we face at the moment.[42]

88. David Pascoe of the Ontario Region discussed both the lack of enforcement officers and intelligence capacity within Environment Canada. He summarized the situation in these terms:

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40 Meeting No. 30, 10 February 1998.

41 Meeting No. 31, 11 February 1998.

42 Evidence, Meeting No. 30, 10 February 1998, at 9:45.

> You know how many investigators we have. You know we have no intelligence officers. And very clearly, with respect to the things that relate to crossing of international borders, whether it's ozone-depleting substances or the export and import of hazardous wastes, it is crucial that we have that intelligence if we're to inspect and investigate and enforce those laws.
>
> We cannot continue to deal with other enforcement agencies, whether they be in the United States or Canada, whether they be provincial police, federal police, state police, customs or other people, because we're looked at to a large degree as a laughing stock because we don't have the resources and we don't have the intelligence to go along with it.[43]

89. François Guimont, Assistant Deputy Minister, recognized the need for an effective intelligence gathering and analysis capacity and felt that it would lead to increased efficiencies.[44] Dale Kimmett, Director, National Enforcement Branch, commented that environmental crime was becoming more global in scope, adding that there was a continuing, growing need for intelligence activity among environmental enforcement agencies, if not worldwide, certainly in North America.[45]

90. Conscious of the need to build an intelligence gathering and analysis capacity within the Department, Environment Canada commissioned Istana Consulting Services to carry out a study on its intelligence needs. The Istana report was completed in 1996, and recommended that Environment Canada establish a professional intelligence unit that would be based in departmental headquarters, with individual officers outposted in the regions. It was conservatively estimated that 1 manager and 12 field intelligence officers (10 in the regions and 2 at headquarters) would be needed to do the work. It was further recommended that the regional intelligence staff be equally divided between pollution control and wildlife enforcement.[46]

91. Dale Kimmet informed the Committee that implementation of the Istana report was progressing very slowly and that very little in terms of total resources was being directed at this function.[47] Given the far greater number and complexity of the issues covered by pollution control, compared to those dealt with under wildlife enforcement, the Committee questions whether there should be an equal division of staff between the two functions, as recommended in the Istana report. It seems clear, however, that an intelligence gathering and analysis capacity is needed within the Department. In the Committee's opinion, it

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43 Evidence, Meeting No. 38, 26 February 1998, at 9:25.

44 Evidence, Meeting No. 34, 18 February 1998, at 16:15.

45 Evidence, Meeting No. 42, 26 March 1998, at 9:55.

46 Istana Consulting Services [Canada] Inc., *Environment Canada, A Study of Intelligence Requirements for Environmental Enforcement*, March 1996. A copy of this report was included in the supplementary information provided to the Committee by Environment Canada.

47 Evidence, Meeting No. 42, 26 March 1998, at 9:45.

should be established at the earliest opportunity and should be funded by new additional resources.

Recommendation No. 12

The Committee recommends that the Minister of the Environment establish without delay a professional intelligence gathering and analysis capacity within the Department, using adequate resources.

92. At his first appearance before the Committee, François Guimont identified partnerships with other enforcement agencies as a means of achieving "efficiencies" which could help to address the resource limitations within the enforcement program.[48] The Committee agrees that, given the increasingly complex nature of environmental enforcement, such partnerships are essential. However, the Committee is also convinced that such partnerships must be, as Mr. Patrick Hollier of the national Office of Enforcement suggested, "a two-way street." He observed:

> Partnerships are a two-way street. If a partnership is going to work, both parties are going to give as much as they receive. This is a question of knowledge, will, resources. It sums it up; it's a two-way street.
>
> I'm not sure we have the ability or the capacity right now to really deliver on any commitments we might make towards such partnerships.[49]

93. Nadine Levin of the CEPA Office made the point that Environment Canada's partners, such as Canada Customs and the RCMP, had their own mandates to fulfil and their own legislation to enforce, and stated that their primary objective was not to enforce environmental legislation.[50] Ian Glen, Deputy Minister, also picked up on this point:

> The question I ask myself and that I pursue first of all with Commissioner Murrray of the RCMP — and I'll put it in crass terms — is where are we in their hit parade of priorities? In essence, if we are effecting a partnership with them, is the work of my department really of serious import for them against their own pressures? That's an honest question to put to him and I expect an honest answer.
>
> I don't think, quite frankly, we will be high on their hit parade. That's what I anticipate. That's a challenge for me and it's a challenge for our colleagues in that partnership.[51]

94. The Committee is concerned that Environment Canada might be viewed as the "poor cousin" in these agreements, with little or nothing to offer its partners. We agree that

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48 Evidence, Meeting No. 34, 18 February 1998, at 16:05.

49 Evidence, Meeting No. 38, 26 February 1998, at 11:30.

50 Evidence, Meeting No. 38, 26 February 1998, at 11:30.

51 Evidence, Meeting No. 38, 26 February 1998, at 11:35.

important efficiencies can be achieved through partnerships with other enforcement agencies and believe that every effort should be made to ensure that Environment Canada has the tools at its disposal to ensure that such partnerships are meaningful and effective.

Recommendation No. 13

The Committee recommends that the Minister of the Environment, in negotiating partnerships with other departments or agencies such as Canada Customs and the RCMP, ensure as a matter of priority that adequate resources and mechanisms are put in place to enable the parties to effectively discharge their obligations and responsibilities.

8. An Independent Enforcement Office

95. During its review of CEPA in the 1994-1995 period, the Committee had the opportunity to talk informally to field staff about their working conditions and particularly about the organizational aspects of the enforcement program. At the time, the Committee was told of undue managerial intervention or interference in enforcement decisions. Based in part on this information, the Committee recommended that an independent, centralized, arms-length enforcement agency be created within Environment Canada.[52]

96. During this round of public hearings, enforcement staff from two of the five regions admitted to having experienced managerial interference, although not necessarily recently. The representative from the Quebec Region indicated in turn that he had not experienced managerial interference during the eight months he had been on the job,[53] while an official with the national Office of Enforcement, but previously with the Quebec Region, refused to answer for fear of being sanctioned.[54] The Committee believes that under the present organizational structure, enforcement officers are still potentially subject to undue managerial interference, particularly in so-called "sensitive" situations, that is, cases where action is taken or being considered against influential economic entities or in *R. versus R.* situations.[55]

97. David Aggett, with the Atlantic Region, stated that he had experienced managerial interference on several occasions in the past. Two of these cases involved the Crown, while the third involved a fragile industry, none of which, however, occurred under the current Deputy Minister. Mr. Aggett stated:

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52 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No. 125.

53 Evidence, Meeting No. 38, 26 February 1998, at 11:05.

54 Evidence, Meeting No.38, 26 February 1998, at 10:00.

55 *R.versus R.* is the short form for *Regina versus Regina*. It refers to situations where legal action is instituted by one Crown body against another Crown body, for example, when Environment Canada lays a charge against Transport Canada for depositing deleterious substances in waters frequented by fish, contrary to section 36(3) of the *Fisheries Act*.

> I had an R versus R case where the prosecution was halted. I had a case with the federal government versus a provincial Crown corporation and that was halted. I had a case that would have implications for a rather fragile industry and that was halted. Again, these are historical cases; these are several years old.[56]

98. The Committee is deeply concerned about managerial interference and although no recent incidents of this kind were brought to our attention, there remains a concern about possible interference.

99. In this connection, the Committee had occasion to review an internal document provided by the Department, entitled *A Process for Achieving Compliance with the Canadian Environmental Protection Act and the Pollution Prevention Provisions of the Fisheries Act and their Accompanying Regulations*. This document outlines the decision-making process for enforcement actions. It indicates that the ultimate responsibility for such decisions rests with the Regional Directors. The Office of Enforcement, at national headquarters, on the other hand, plays a strictly advisory role in operational matters.

100. In the Committee's opinion, the inefficient chain of command and the implementation procedures described in the document cannot guarantee the fair, consistent and effective application, across the regions and the regulated industries, of the official CEPA *Enforcement and Compliance Policy*. The existing structure, by shifting final responsibility for enforcement decisions from the enforcement personnel to the Regional Directors, carries with it the risk of undue managerial interference, since these officials are also responsible for program delivery and other non-enforcement functions. In the Committee's opinion, it is essential that the decision-making process be above suspicion and that enforcement decisions always be made in a transparent, fair, consistent and effective manner.

101. Given the nature of the enforcement function and the absolute need for transparency, fairness, consistency and effectiveness in enforcement decisions, the Committee strongly believes that such decisions should not be made by officials having managerial functions and responsibilities in any capacity other than enforcement. Rather, the Committee reiterates that they should be made by an independent, centralized, arms-length agency whose sole function would be to enforce the environmental laws and regulations.

102. The case for an independent, arms-length enforcement agency was forcefully made by Paul Muldoon of the Canadian Environmental Law Association. When asked to explain the province of Ontario's extremely high conviction rate for environmental offences in the past, he observed that the creation of a separate enforcement branch, divorced from the

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56 Evidence, Meeting No. 38, 26 February 1998, at 11:10.

abatement section of the Ministry, had been instrumental in improving that province's enforcement record.

> It was only in 1986 that there was a very radical change within the Ministry of the Environment, and that was with the establishment of the IEB; the Investigation and Enforcement Branch. That was a new branch that was divorced from the abatement section of the Ministry of the Environment. You then had a specialized group of people within the ministry who focused simply on enforcement. Colloquially, they are known as the "green cops," because they go in, inspect, and enforce the laws. That's their job. They are specialized, they are dedicated, and they do it with a sense of dedication and robustness, because that's their expertise.
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> So although more resources were put into it, it was also an institutionally designed feature that they are not there to win industry over or show it how to do the right thing. That's for the abatement people. Their job is to ensure compliance with the law.[...] In Environment Canada there is not an analogous situation. Therefore, at times things get quite muddled.[57]

103. In addition to having a credible, independent enforcement agency, with adequate powers and an intelligence gathering and analysis capacity, the Committee also believes that it would be desirable for the enforcement agency to have the status of an investigative body within the meaning of the federal *Access to Information Act*. Without such a status, the agency would be at a disadvantage in terms of its dealings with other enforcement agencies, particularly in terms of information exchange. This point was made by Guy Martin of the national Office of Enforcement, who informed the Committee that in order to obtain information from other investigative agencies, his office had to be able to protect that information, something it could do only if it had the status of an investigative body. If we cannot safeguard the information, he stated, it would be difficult for us to acquire that intelligence ourselves or to obtain it from other enforcement agencies.[58]

Recommendation No. 14

The Committee recommends that:

(a) the Minister of the Environment revise the Department's current structure to establish an independent centralized enforcement agency, with regional branches, that would report directly to the Minister of the Environment;

(b) in setting up an independent centralized enforcement agency, the Minister of the Environment ensure that enforcement decisions are not made by officials having managerial functions and responsibilities in areas other than enforcement.

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57 Evidence, Meeting No. 36, 24 February 1998, at 9:50.

58 Evidence, Meeting No. 42, 26 March 1998, at 10:15.

(c) **the Minister of the Environment take the necessary steps to ensure that the independent enforcement agency acquires the status of an investigative body and that it be designated as such for the purposes of the *Access to Information Act*.**

104. No amount of restructuring, however, will ensure effective enforcement unless the enforcement personnel is properly trained. The Committee was provided with an impressive catalogue of courses offered by the Department, the *Catalogue of Enforcement Courses, 1997-1998*. We question, however, the extent to which the staff have been able to partake of these courses.

105. Noting that technologies were continually changing and that the issues were getting more complicated, Patrick Hollier of the national Office of Enforcement pointed out that training was critical in terms of ensuring quality enforcement. "I would call it more than training," he added, "I would call it ongoing learning."[59] The Committee agrees with this observation. As pointed out throughout this report, pollution control is a multi-facetted and complex dossier. Comprehensive and continuing education must be provided to ensure quality enforcement.

Recommendation No. 15

The Committee recommends that the Minister of the Environment provide the enforcement personnel with comprehensive training programs on a continuing basis to assist them in carrying out their duties.

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59 Evidence, Meeting No. 38, 26 February 1998, at 12:25.

ENFORCEMENT PROBLEMS UNDER FEDERAL AND PROVINCIAL/TERRITORIAL AGREEMENTS

106. As discussed earlier, a number of administrative agreements have been negotiated between the federal and the provincial/territorial governments in relation to CEPA and the pollution prevention provisions of section 36 of the *Fisheries Act*. It should also be mentioned that a number of federal/provincial/territorial agreements have been concluded in relation to the "fish habitat" provisions in section 35 of the *Fisheries Act*. In contrast to section 36 of the *Fisheries Act*, the primary administration of which is now vested in Environment Canada, section 35, as pointed out earlier, has remained under the administrative authority of the Department of Fisheries and Oceans (DFO). Section 35 of the *Fisheries Act* is beyond the scope of this study. The Committee, however, received a number of submissions respecting the administrative agreements negotiated under section 35 of the *Fisheries Act*. As these agreements are relevant to the issues examined in this report, the Committee felt it appropriate to include them, where applicable, in the discussion.

107. Both section 98 of CEPA and section 38 of the *Fisheries Act* require that the legislation be enforced by "inspectors" designated as such by the Minister for the purposes of the Act. Few provincial/territorial enforcement officers, however, have been given such designations since, under the terms of most of the bilateral agreements, the provinces and territories have not actually assumed the responsibility for enforcing the federal legislation. Matters typically covered under these agreements include such things as cooperative working arrangements in areas like research, training, spills and unauthorized releases, monitoring, inspections and investigations. As a rule, however, both parties retain the authority to act under their respective legislation.

108. During the Committee's hearings on the Canadian Council of Environment Ministers' harmonization initiative last fall, witnesses raised a number of concerns about the bilateral agreements currently in place. One major complaint was the difficulty of assessing their effectiveness since so little information was publicly available on them. Given the relevance of these agreements to the much more ambitious harmonization initiative and the numerous concerns raised in relation to the proposed initiative, the Committee recommended that the Auditor General conduct an environmental audit of the effectiveness of the existing bilateral agremeents.[60] The Auditor General has since indicated that he would do so.

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60 House of Commons Standing Committee on Environment and Sustainable Development, *Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment*, December 1997, Recommendation No. 4.

109. During this round of hearings, the Committee heard from several witnesses that the enforcement record under the bilateral agreements was extremely problematic.

110. One example was provided by the Sierra Legal Defence Fund. Referring to the previous (but since renegotiated) Canada-Quebec agreement on the application in Quebec of the federal pulp and paper mill regulations, this group indicated to the Committee that, in 1996, at least 20 pulp and paper mills in Quebec had been discharging toxic effluent in excess of the regulated standards, for a total of 189 violations, 98 of which occurred in one mill. It pointed out, however, that no prosecutions had been instituted against the offenders, thus leading it to conclude that there had been a "widespread and alarming lack of enforcement by the federal and provincial governments".[61]

111. An even more alarming case was described to the Committee by Juli Abouchar of the Conservation Council of New Brunswick. It involved the salmon aquaculture industry in New Brunswick, where serious over-crowding at fish farms led to rampant disease, marine pollution and nutrification (excess nutrient loading) due to the release of surplus food, faeces, pesticides, antibiotics, anti-fouling agents and other materials. Ms. Abouchar told us that a widespread infestation of sea lice developed in caged salmon in 1994 and 1995 and in an effort to combat the infestation, strong chemicals, at least one of which was highly toxic and not authorized for use, were added to the water at the time, possibly harming the neighbouring lobster pounds. More recently, a fatal and highly infectious virus infected one quarter of the salmon farms and as a result over one million fish had to be slaughtered.

112. Noting the negative impacts on marine species and on fish habitat, Ms. Abouchar indicated that neither the federal Department of Fisheries and Oceans or Environment Canada took action under section 35 (fish habitat) and 36 (pollution prevention) of the *Fisheries Act*. The main reason for their inaction, she pointed out, was the Canada-New Brunswick Memorandum of Understanding on Aquaculture Development, signed in 1989. This agreement essentially placed the full authority for the management of the aquaculture industry in the hands of the province and although, under the terms of the agreement, the federal government was expressly allowed to take measures deemed necessary to protect matters within its jurisdiction, it chose not to do so.[62]

113. What these cases demonstrate is that the federal government has not intervened and take enforcement action, even though it was expressly entitled to do so under the terms of the agreement. There may be many reasons for its failure to act. It may be that, by the time notice was given and consultations took place, it was too late for the federal officials to intervene and collect the necessary evidence to take action. It may also be that for political

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61 Sierra Legal Defence Fund, Brief to the Committee, 24 February 1998.

62 Evidence, Meeting No. 41, 17 March 1998, at 9:15.

or economic reasons the federal government was not prepared to exercize its authority, preferring instead to defer to the other government. It may also be that due to a lack of resources, the enforcement staff did not have the time to go through the data submitted directly to it by the regulated community or indirectly through the province. It may also be that inadequate data was submitted or that it was submitted too late to take action.

114. Whatever the underlying reason or reasons for the inaction, the fact remains that Environment Canada and indeed some provinces are not enforcing environmental laws when they could and should. This failure to act is of deep concern to the Committee. It is doubly troubling in light of the federal government's decision to enter into a larger harmonization agreement covering the entire country. In the Committee's opinion, it is essential that the administrative agreements establish rigorous management structures and accountability mechanisms to ensure that the parties' roles, responsibilities and courses of action are well understood by them and by the regulated communities, and that any dispute be resolved in an efficient and transparent manner.

115. A further concern raised in relation to the bilateral agreements revolves around Environment Canada's ability to maintain its physical capacity to intervene efficiently. The loss of federal capacity due to "downloading" of responsibilities on the provinces or territories is a problem that was vividly demonstrated when, in September 1997, the province of Ontario pulled out of its agreement with the Department of Fisheries and Oceans to enforce the fish habitat provisions of the *Fisheries Act* and screen project proposals for impacts to fish habitat. Since there were no federal staff to pick up the slack, Ontario's withdrawal created a huge hole in the Department's fish habitat protection program. In an effort to fill the gap, DFO had to temporarily hire additional habitat biologists to deal with the increased project referral workload in the province. It also had to assign fishery officers from other regions to deal with enforcement issues. Four federal fisheries officers were thus brought in on interim postings to do the work that had been carried out by the province's 215 enforcement officers.[63] The Committee has since learned that the federal enforcement complement has been reduced from four to two officers, as the others had to return to their home regions.[64]

116. This case clearly illustrates the dangers of handing over responsibilities to another level of government, even under administrative agreements. Once one level of government effectively devolves its responsibilities to another, it progressively abandons the field and loses its capacity to operate. In the end, it will lose the necessary budgets, staff and expertise. As Franklin Gertler of the Quebec Environmental Law Centre pointed out, "when a province decides not to enforce a piece of federal legislation, then it's very difficult

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63 This information was provided in a letter of March 13, 1998 to the Committee by G.E.Swanson, Director General, Habitat Management and Environmental Science, Department of Fisheries and Oceans.

64 Supplementary information provided in a letter of 21 May 1998 to the Committee by G.E. Swanson.

for the federal government to go back to its previous role because it doesn't have the means to do so anymore."[65]

117. In the Committee's opinion, it is essential that Environment Canada retain its operational capability. This requires keeping inspection and investigation units adequately staffed, trained, equipped, informed and up-to-date, which means keeping the units in active duty, with appropriate resources. In that perspective, it would appear that a cooperative model in which the Department and the provinces and territories conducted joint operations would be preferable to the so-called "one-window approach," as exemplified by DFO's fish habitat agreement with Ontario and the Quebec-Canada agreement on the federal pulp and paper mill regulations.

Recommendation No. 16

The Committee recommends that the Minister of the Environment, in negotiating environmental agreements with the provincial, territorial and Aboriginal governments:

(a) ensure that it retains full authority and accountability, as well as the appropriate means and resources to enforce CEPA and the pollution prevention provisions of the *Fisheries Act;*

(b) ensure that efficient and transparent mechanisms for monitoring, reviewing, reporting and resolving disputes are included in the agreements so that the parties are compelled to fulfill their commitments and obligations.

118. The need to have clear agreements, where the parties' respective roles and responsibilities are clearly spelled out, was emphasized by witnesses who appeared on behalf of the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority. These witnesses told us of the difficulties encountered by the Grand Council of the Crees of Quebec (the Cree) in implementing the terms of the James Bay and Northern Quebec Agreement, a multipartite land claim agreement signed in 1975 by the Governments of Canada and Quebec, Hydro-Quebec, the Cree and Inuit communities of Quebec and other parties.

119. They pointed out that, during the negotiation process, the Crees had expected that the agreement would result in a restructured and long-term working relationship with the federal government, including Environment Canada and the Department of Fisheries and Oceans (as they then were). Stating that both of these departments had since used the agreement more as a pretext for inaction than as a justification for their continuing

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65 Evidence, Meeting No. 39, 10 March 1998, at 10:15.

involvement, they remarked that there had been a progressive strategic withdrawal of the federal government from the ecological and resources management issues arising from the hydroelectric development in the Cree lands, a problem which, they observed, extended to other areas of federal responsibility, including that of basic support for the structures set up under the Agreement.

120. They remarked that Environment Canada and the Department of Fisheries and Oceans were to have been involved in a three-way partnership with the Crees and the Quebec government with respect to environmental impact assessment and environmental policy development, but stated that their participation proved to be a big disappointment. They expressed the opinion that both departments seemed to be driven more by a determination to avoid engagement than by a willingness to assume responsibilities under the federal legislation. There had consistently seemed to be a larger political agenda underlying the implementation of the Agreement which involved remaining invisible (or nearly so) and avoiding at all costs being seen as having something tangible to say to the Quebec government about natural resources development or environmental protection. In the witness' view the two federal departments had shown no willingness to implement the provisions of the Agreement which concerned them. They added that the same remark could also be extended to other federal departments, notably Health Canada, which appeared to have determined that mercury ceased to be a health issue in Northern Quebec the day the Agreement came into force.[66]

121. The Committee recognizes that mercury contamination continues to be a major issue in Northern Quebec, particularly in terms of human health but also as an obstacle to any commercial activity based on fishery resources (both recreational and commercial fisheries). We share these concerns and make a recommendation in this regard at the end of the report.

122. For the purposes of our immediate discussion, however, the Committee sees the implementation of the James Bay and Northern Quebec Agreement (or its non-implementation) as further evidence that once an agreement is in place, the federal government fails to assume its full responsibilities and take action where appropriate, preferring instead to withdraw from the field and reducing its resources accordingly. Again, the Committee wishes to express concern about what seems to be a federal "withdrawal" trend under these agreements and believes that it augurs poorly for the CCME's broad harmonization agreement which would touch upon many facets of environmental protection and management, including setting Canada-wide standards for environmental quality and human health, inspection and enforcement of environmental laws and

66 Brief presented to the Committee by the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, 11 March 1998, p. 7-8.

regulations, environmental impact assessments and international environmental agreements.

123. During its hearings last fall on the CCME's harmonization initiative, the Committee heard many concerns about the proposed initiative and made a number of findings based on the evidence before it. Among other things, the Committee concluded that:

- There is insufficient evidence of overlap and duplication of environmental regulations and activities between the federal and provincial/territorial governments, thus making it doubtful that greater administrative efficiency and cost savings would be achieved under the agreement.

- The provinces might eventually assume a considerable number of functions under the Accord and Sub-Agreements, thus leaving the federal government with only a limited set of responsibilities of considerably less importance than its current environmental protection role.

- A significant devolution of federal environmental protection powers to the provinces and the territories might engender weaker environmental protection in Canada.

- Rather than assuring that environmental practices and regulations of the two levels of government are complementary, the ultimate effect of the Accord and Sub-agreements will be to eliminate one level of regulations and practices.

124. The Committee continues to have serious misgivings about the harmonization initiative. Nothing said in this current round of hearings has made us look more favourably upon the initiative. If anything, Environment Canada's poor enforcement record under the bilateral agreements, as well as the problem of loss of operational capacity, have strengthened our belief that the Accord and Sub-agreements may be ill-advised.

125. As mentioned earlier, the Sub-agreement on Enforcement is in the process of being developed. Although the Committee had recommended that the full package be finalized before ratification of the Accord and the three completed Sub-agreements (standards, inspections and environmental assessments), this advice was not heeded and the first phase of the initiative was signed on 29 January 1998. In its report, the Committee questioned the wisdom of moving ahead on the Sub-agreement on inspections in the absence of the one on enforcement. Pointing out that the two went hand in hand, it was our position that the two should be dealt with together. This was not done. Nonetheless, the Committee believes that the forthcoming Sub-agreement on enforcement deals with too important an area for it to go ahead at this time. The Auditor General has agreed to prepare a report on the effectiveness of the existing environmental agreements with the provinces and territories. The Committee views the tabling of his report in Parliament as a desirable pre-condition to the signing of the Sub-agreement on enforcement, for it will provide

Canadians with a thorough and independent assessment of the existing strengths and weaknesses of the existing agreements and thus allow informed decisions to be made on the provisions that should be included in the Sub-agreement on enforcement.

Recommendation No. 17

The Committee recommends that:

(a) **the Auditor General of Canada carry out with all due dispatch the environmental audit that he has agreed to conduct in relation to the effectiveness of the bilateral environmental agreements between the federal and provincial/territorial governments; and**

(b) **the Minister of the Environment delay the signing of the proposed Sub-agreement on Enforcement under the Canadian Council of Environment Ministers' harmonization initiative until the Auditor General's report has been tabled in Parliament.**

126. The CEPA *Enforcement and Compliance Policy* recognizes that environmental protection is "a responsibility shared by all levels of government as well as by industry, organized labour and individuals".[67] Section 2(*d*) of CEPA mandates, in turn, that the Government of Canada "encourage the participation of the people of Canada in the making of decisions that affect the environment". Bill C-32, the proposed new CEPA legislation, reiterates this obligation in section 2(1)(*e*), but also requires that the Government of Canada "facilitate the protection of the environment by the people of Canada" section 2(1)(*f*).

127. In its 1995 report on the review of CEPA, the Committee stressed the importance of involving the Canadian public in environmental matters. It stated:

> The government alone cannot — nor should it be expected to — protect the environment. Everyone has a stake in a healthy, clean and safe environment; everyone, therefore, has a part to play in ensuring its well-being.[68]

128. With a view to encouraging and facilitating the public's involvement in safeguarding the environment, the Committee made 14 specific recommendations in its 1995 report on the review of CEPA. Among other things, the Committee called for the enactment of improved public notice and comment provisions under CEPA, the conferral of an explicit statutory basis for the National Pollutant Release Inventory (NPRI), the strengthening of the whistleblower protection provisions and the creation of a citizen suit remedy that would entitle citizens, without proof of personal loss or damage, to commence a civil action against a party who, in violating the Act, risked causing or actually caused significant harm to the environment.

129. The Committee notes that Bill C-32 contains a number of measures aimed at enhancing the public's participation. While these measures will be examined during our hearings on the Bill, one issue the Committee would like to comment on at this time concerns the publication of enforcement data. Public access to information is the cornerstone of participatory democracy. If citizens are kept in the dark about the actions of their government, they can hardly be expected to actively participate in the process and make meaningful contributions.

130. In the Committee's opinion, Canadians are not getting the kind of detailed information about enforcement action that they should have at their disposal. The CEPA enforcement data, published in the annual reports, provides detailed information only in

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67 Minister of the Environment, *Enforcement and Compliance Policy*, 1988, p. 14.

68 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, p. 203.

relation to prosecutions. Information is provided on the identity of the accused party and the type and number of charges laid, including the date and location of the alleged offence(s). Information is also given on the status of the case and, where applicable, the disposition, including details on any penalty imposed. Similar data, however, is not provided in relation to warnings or directions. Information in relation to these measures is given only in relation to the number of times a warning or direction has been issued under a given regulation, but the parties, date, location and nature of the violation are not identified. Information respecting inspections and investigations is equally limited.

131. The information provided in relation to the enforcement of the provisions of the *Fisheries Act* relating to fish habitat protection (section 35) and pollution prevention (section 36) is, on the other hand, so incomplete and inadequate that legal action was recently taken by environmental groups against the Minister of Fisheries and Oceans to compel him to comply with his statutory obligation under section 42.1 of the Act.[69] This section requires the Minister to table an annual report in Parliament on the administration and enforcement of the foregoing provisions of the Act, including a statistical summary on the convictions obtained.

132. Gerry Swanson, Director General, Habitat Management and Environmental Science, Department of Fisheries and Oceans, attributed his Department's publication problem to its inability to obtain the requisite information from the provincial governments that had taken over the enforcement function. He stated:

> Well — not to minimize the problem you've cited — the statute provides that we publish a report as soon as practicable after the conclusion of the year, and that's what we attempt to do.
>
> There are no agreements, however, in existence with provincial governments that obligate them to provide us with the kind of information we are talking about. We have requested this kind of information of certain provinces in past years, and we have been told that they don't keep the kind of information in the format in which we would like to have it. So we're left with the kind of situation where we would have to finance or design information kinds of systems to develop that kind of information.[70]

133. The Committee is deeply concerned about the obvious inadequacy of the enforcement data published in the *Fisheries Act* annual reports. We are also concerned about the inordinate delays incurred in publishing the data in the first place. The Department of Fisheries and Oceans was several years in arrears in publishing its annual reports; it has just now gotten around to tabling its reports for 1994-1995, 1995-1996 and 1996-1997. One reason for the delay relates to the fact that the Department does not itself

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69 The action, commenced in the Federal Court of Canada in February 1998, was launched by the Sierra Legal Defence Fund on behalf of the Friends of the Oldman River and the United Fishermen and Allied Workers' Union.

70 Evidence, Meeting No. 34, 18 February 1998, at 17:35.

enforce the Act in all cases and therefore does not have the data at hand. As the Minister of Fisheries and Oceans explained:

> We have in the past experienced difficulty assembling the required information. In the inland provinces, for example, the provincial governments undertake enforcement of the *Fisheries Act* and we do not have access to their data on offences and convictions. We are, however, assembling information on convictions for the coastal regions which we intend to include in the 1996/1997 report.[71]

134. The Committee was also concerned when it heard about the Sierra Legal Defence Fund's recent application under the federal *Access to Information Act* to obtain information on the state of compliance of pulp and paper mills in eastern Canada. In response to this application, the federal government indicated it would require a total of 556 hours to process the request (Atlantic provinces: 7 hours; Quebec: 489 hours; and Ontario: 60 hours). The applicant was also asked to pay a processing fee of $5,510. Although a fee reduction was eventually negotiated, Jerry DeMarco of the Sierra Legal Defence Fund observed that, "this gave us a strong indication that there was no readily available data on compliance with the *Fisheries Act* regulations on the part of the pulp and paper industry."[72]

135. The Committee also noted that incomplete data was being kept in relation to CEPA. When asked about the recidivism rate for violators who had been issued a warning letter, officials from Environment Canada were unable to provide a full answer. In supplementary information provided in writing to the Committee, officials could only estimate — on the basis of "preliminary data" — a recidivism rate of 4.4% since fiscal year 1989-1990 to February 1998, adding that a more complete inventory of past warning letters was being compiled. Given that the issuance of warning letters is the most frequently employed enforcement option, the Committee is dismayed that the Department does not have readily accessible data on this matter.

136. There is also no published data on the number of files opened due to information obtained through a phone call, a tip or other source, but subsequently closed without any action having been taken. The Committee was told that although there was a response in all cases reported to the Department, some of these "responses" involved no more than filling out an occurrence report. Due to the unavailability of an investigator, some of the cases had not been followed up and were eventually closed because too much time had gone by to look into the matter and also because the two-year limitation period for summary conviction proceedings had run out.[73]

137. The Committee did not obtain specific information on how many cases of "non-action" there were, but the fact that there are some is of concern to the Committee.

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71 Letter of January 19, 1998 from David Anderson, Minister of Fisheries and Oceans, to Thomas Heintzman of the Sierra Legal Defence Fund, as set out in the brief provided to the Committee by the Sierra Legal Defence Fund, 24 February 1998.

72 Evidence, Meeting No. 36, 24 February 1998, at 9:30.

73 Evidence, Meeting No. 38, 26 February 1998, at 9:15.

When members of the public take the time and trouble to inform the authorities of a suspected violation, they should, at a minimum, be entitled to have their complaint looked into and not relegated to the sidelines. If Environment Canada is serious about having the public play a role in protecting the environment, it must act on these complaints. It must also be prepared to inform Canadians of its limitations and publish data on cases of "non-action," should they continue to occur.

138. The Committee is hopeful that data management will improve significantly once NEMISIS, the national databank and case management system for enforcement activities, is fully operational. According to David Pascoe of the Ontario Region, the new system is very promising:

> NEMISIS is an excellent enforcement tool. It's only been operating for six to nine months. We're still working with it. It's still getting new things added to it and being tested, but it is a dramatic improvement over what we've had in the past. It will provide us with the ability to generate enforcement statistics and track enforcement actions. It's a very good tool that the regions use and that our headquarters people use as well.[74]

139. Since data management promises to be much improved under NEMISIS, the Committee believes that the Canadian public should also be able to partake of its benefits. As the Committee noted earlier, only limited information is currently provided on the enforcement activities under CEPA. In the Committee's opinion, more detailed data should be published so that Canadians are better informed about enforcement activities.

140. The Committee also believes that it would be beneficial if Environment Canada assumed responsibility for publishing the enforcement data in relation to the pollution prevention provisions of the *Fisheries Act*. It has primary responsibility for enforcing these measures and is therefore in a better position than the Department of Fisheries and Oceans to ensure that comprehensive data is published in a timely manner.

Recommendation No. 18

The Committee recommends that:

(a) the Minister of the Environment be responsible for publishing all enforcement data relating to the laws and regulations that Environment Canada is mandated by law or agreement to enforce, such as data respecting the enforcement of CEPA, the pollution prevention provisions of the *Fisheries Act* and the provisions of the *Manganese-based Fuel Additives Act;*

(b) the Minister of the Environment be required to publish and table before Parliament a detailed annual report on the enforcement actions taken in the previous year in relation to all laws and regulations that Environment

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74 Evidence, Meeting No. 38, 26 February 1998, at 10:35.

Canada is mandated by law or agreement to enforce, identifying the type of action taken (inspections, warnings, prosecutions, etc.), the party in relation to whom the action was taken, the date and place where the action was taken, the status of the case and its outcome, where applicable;

(c) the Minister of the Environment also be required (i) to publish detailed information on all cases of suspected violations reported to Environment Canada officials, in relation to which no enforcement action had been taken at the time the cases were closed; and (ii) to set out the reasons why no action was taken in these cases;

(d) the Government of Canada introduce the necessary amendments to the relevant legislation, such as the *Fisheries Act* and the *Manganese-based Fuel Additives Act*, transferring the enforcement reporting responsibility to the Minister of the Environment.

141. Earlier in this report, the Committee emphasized the importance for Environment Canada to form partnerships with other enforcement bodies in order to better protect the environment. In the Committee's opinion, the Department should also actively seek partnerships with those who, by reason of their special commitment to the environment or the nature of their occupation, are also natural allies in wanting a safe and healthy environment.

142. Concerned groups, particularly environmental groups, Aboriginal peoples and organized labour, are well suited to assist the Department in carrying out its enforcement function. Some have specialized knowledge. Others, especially workers, are there to observe problems firsthand. As Dick Martin of the Canadian Labour Congress pointed out, however, few workers have the technical expertise needed to ascertain whether or not a violation has occurred. Chemical analysis is required.

> I might be standing on the shore and see a fluid come out of a factory, but I don't have the slightest idea what's in that in terms of chemicals. Are they toxic? Are they carcinogenic? What are they going to do to the fish and the habitat and so forth?
>
> What you really need is chemical analysis. You need chemists. You need engineers to explore that. It seems to me that once again that's up to Environment Canada to have those specialists who can do that type of testing. A lay person is in no position to do the testing until it's too late, until we've had a body count, and that's what we're trying to prevent.[75]

143. The Committee agrees that specialists are needed, but it also recognizes that unless the alarm is sounded, the specialists may not be brought in on time to do the necessary

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75 Evidence, Meeting No. 35, 19 February 1998, at 10:05.

testing and avert or control the harm. Sounding the alarm at the earliest opportunity is key. For this reason, the Committee believes that the Department should reach out and encourage concerned groups, such as environmental groups, Aboriginal peoples, organized labour and industrial associations, to become active partners in protecting the environment. The Committee also believes that Environment Canada should broaden its base by actively seeking the involvement of Canadians and facilitating their participation, as mandated under section 2(1)(*e*) of Bill C-32, the new CEPA legislation. Outreach measures could include the provision of training programs, educational packages and financial assistance, as well as public information campaigns and specialized communication hotlines, such as the TIP (Turn in Poachers) program established by the Government of Saskatchewan.

Recommendation No. 19

The Committee recommends that the Minister of the Environment put in place appropriate structures, mechanisms and funding to facilitate the collaboration of all interested parties concerned with the environment, such as organized labour, Aboriginal peoples, environmental groups, management and members of the public, to encourage and facilitate their communicating to the appropriate environmental authorities any knowledge or information on cases of potential or confirmed non-compliance with environmental laws and regulations.

144. Witnesses pointed out to the Committee that comprehensive whistleblower protection was an essential ingredient in enlisting the active participation of concerned citizens and of employees in particular since they are at risk of reprisals in the workplace should they blow the whistle on their employers. As mentioned earlier, the Committee recognized the need for effective whistleblower protection in its 1995 report on CEPA and recommended that CEPA be amended accordingly. [76] Given the specific scope of that study, the recommendation was of necessity limited to CEPA-related violations. While the Committee notes that new whistleblower provisions are being proposed in Bill C-32, we believe that comprehensive whistleblower protection should be provided to Canadians in all applicable federal environmental legislation, and not just selected statutes.

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76 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No 116. This recommendation provided that:

a) A general whistleblower provision be added under Part VII of CEPA to protect from disclosure the identity of all persons who, in good faith, report or propose to report any offence or violation under the Act or regulations, or likely or probable offence or violation under the Act or regulations, if such persons request anonymity.

b) CEPA be further amended to protect all federally-regulated employees from being dismissed, harassed or disciplined in the workplace for reporting in good faith any offence or violation under the Act or regulations, or likely or probable offence or violation under the Act or regulations, or who propose to do so.

c) CEPA be further amended to provide that the foregoing protection be granted to persons or employees who, in good faith, make their report or propose to make their report to someone other than a CEPA inspector.

Consequently, the Committee feels that the scope of its original recommendation should be broadened.

Recommendation No. 20

The Committee recommends that the Government of Canada enact comprehensive whistleblower protection in all applicable federal environmental legislation.

145. One situation where concerned citizens took action but were stopped in their tracks has to do with private prosecutions. Jerry DeMarco of the Sierra Legal Defence Fund told the Committee that his organization had been involved in at least four private prosecutions in the province of British Columbia, involving violations of the *Fisheries Act*. All four cases were taken over by the provincial Attorney General, however, and all were stayed. He stated:

> It's difficult to lift the government veil in this case to find out exactly what is behind the staying of them. Some provinces do not routinely stay private prosecutions in environmental matters. For some reason, B.C. and Alberta do it as a matter of course; they'll do that routinely. [...] This is not a case where there were frivolous or vexatious lawsuits. [...] The facts of the raw sewage going out from the Greater Vancouver Regional District sewer outfall on Clark Drive were as clear as can be. There was no doubt that this raw, untreated, unscreened sewage was going out, and that's certainly a violation of the *Fisheries Act*.
>
> Sierra Legal took these cases on only when our staff were of the view that there was a very strong case to be made. Indeed, when the government took them over, they indicated to us that the evidence supporting the charge was good and there was a substantial likelihood of conviction.[...] However, after a series of adjournments they decided that they would stay the charges.
>
> We've tried to challenge that, but because of the wide discretion on the part of the Crown, it's difficult to find out exactly what the motivation is. They talk about handshake agreements between the province of B.C. and the municipality as being the municipality's excuse for continuing to discharge pollution. That could possibly be a defence under provincial legislation, but these charges dealt with both provincial and federal legislation, so that's really no excuse for staying the charges under the *Fisheries Act*.[77]

146. The problems encountered by citizens who undertake a private prosecution are not new to the Committee. This matter was considered in the 1995 report on the revision of CEPA. At that time, the Committee had recommended that CEPA (as opposed to the *Criminal Code*) be amended expressly to permit private prosecutions. It further recommended that, where the Attorney General opted to take over the prosecution, the

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77 Evidence, Meeting No. 36, 24 February 1998, at 10:00.

private complainant be entitled to remain a party to the proceedings and that if the case were settled out of court, the private complainant be entitled to participate in the negotiations and be made a party to the agreement.[78]

147. The federal government rejected this recommendation. It stated that within the context of the Canadian criminal law, the incorporation of such rights into a renewed CEPA would limit the discretion of the Attorney General. It indicated that such an incorporation would not be appropriate, and pointed out that, as a matter of government public policy, private prosecutions assumed by the Attorney General were suspended only when there was insufficient evidence to sustain a charge or where it was not in the public interest to prosecute. It was the federal government's intention, it added, to continue with this policy.[79]

148. As the Committee stated in its 1995 report, proceeding by means of a citizen suit may be the preferred route since the standard of proof is less onerous in a civil action than it is in a criminal prosecution. Also, the Attorney General would not be entitled to take over the action, as in the case of a private prosecution, although, under certain citizen suit schemes, he or she might be made a party to the proceedings.

149. A number of witnesses, such as the Canadian Environmental Law Association and the Sierra Legal Defence Fund, urged that effective citizen suit provisions be enacted. The Committee notes that Bill C-32 would introduce such measures and these will be reviewed during our study of the Bill. Although a citizen suit remedy may soon be available, the Committee considers that private prosecutions might be appropriate in some cases. Given the possibility of abuse of process, however, we believe that the federal government should be required to provide a clear and detailed policy statement on private prosecutions assumed by the Crown. In particular, the Attorney General of Canada should have to define precisely when and why it would be in the "public interest" to stay the proceedings or otherwise settle the case out of court, and what the complainant's role should be in such cases.

Recommendation No. 21

The Committee recommends that the Attorney General of Canada, in cooperation with the Minister of the Environment, develop and publish a detailed policy statement on private prosecutions involving federal environmental offences. Specifically, this policy statement should define the role of the private complainant when the prosecution is taken over by the Crown and the reasons why it would be in the public interest to suspend the proceedings or otherwise settle the case out of court.

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78 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No. 121.

79 Government of Canada, *CEPA Review: The Government Response, Environmental Protection Legislation Designed for the Future — A Renewed CEPA*, December 1995, p. 28.

CONCLUSION

150. Throughout this report the Committee has stressed the importance of effectively enforcing Canada's environmental laws. Based on the evidence presented, the Committee concludes that this is not happening. Lack of political will might be partly to blame, but the major cause, in the Committee's view, is the lack of adequate resources.

151. The Committee was struck by the candour of Grant Pryznyk, Director, Conservation and Protection, Central and Arctic Region, Fisheries Management, Department of Fisheries and Oceans. When asked if he had the necessary resources to implement section 35 of the *Fisheries Act* (fish habitat protection), Mr. Pryznyk simply responded "no".[80]

152. In contrast, Ron Shimizu, Regional Director for the Ontario Region, informed the Committee that his resource base was relatively stable. He felt he could work within it and did not intend to ask for new resources.[81] This position is somewhat surprising considering that, due to lack of resources, the Ontario Region does not enforce the pollution prevention provisions of the *Fisheries Act* and is compelled to close some files before the cases are investigated because the two-year limitation period for summary convictions proceedings has expired.[82] The Committee places greater faith in the assertion of the Deputy Minister who, after considerable probing, admitted that the enforcement program lacked adequate human and financial resources.[83]

153. The Committee concurs with the Deputy Minister. In its opinion, the enforcement program is woefully understaffed. There are in total 60 enforcement personnel in the regions and a further 22 supporting personnel at the national Office of Enforcement. In contrast, an internal study, prepared in 1993, conservatively estimated that over 300 staff (full-time equivalents) would be needed for effective enforcement.[84] Of course, this estimate was based on perceived need for the 1994-1995 period. Since then, more regulations and laws, as mentioned earlier, have been added to the roster of enforcement duties, and still more are to come.

154. In a departmental document entitled *Proposed Environmental Protection Services Regulatory Initiatives, Fiscal Year 1998-1999, and Planning Years 1999-2001*, at least five new regulations are proposed for publication in the *Canada Gazette* during the 1998-1999

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80 Evidence, Meeting No. 34, 18 February 1998, at 17:10.

81 Evidence, Meeting No. 34, 18 February 1998, at 17:55.

82 Evidence, Meeting No. 38, 26 February 1998, at 9:15 and 11:15.

83 Evidence, Meeting No. 38, 26 February 1998, at 10:40.

84 Extracts of August 4, 1993 study were tabled with the Committee on 26 February 1996.

period, including the Federal Boiler Emission Regulations, the Hazardous Wastes at Federal Facilities Regulations, the Solvent Degreasing Operations Regulations, the Tetrachloroethylene Regulations and the Tributyl Tetradecyl Phosphonium Chloride Regulations. In addition the scope of other, existing regulations is being broadened, while several additional regulations are being considered for publication in the 1999-2000 period, such as the Hexavalent Chromium from Chrome Plating Regulations and the Fish Habitat and Spill Reporting Regulations.

155. Although the Committee welcomes enhanced environmental protection through new or improved regulations, some members are concerned that the existing regulations are not being effectively enforced at present and question the advisability of broadening the regulatory workload without a concomitant commitment to increasing the resource base.

156. Also mentioned earlier in this report was the extent to which operating budgets have been reduced in actual fact, even though they might not have been directly cut under Program Review. The operating budget (minus salaries) for 1997-1998 in the Quebec Region was $115,000; in the Atlantic Region, it was $150,000.[85] As mentioned earlier, the one for the Pacific and Yukon Region, at $87,100, dropped by 72% from the last to the current fiscal year due principally to the termination of the Fraser River Action Plan on April 1, 1998! The Committee finds these figures alarming. Also alarming is the fact that enforcement staff vacancies have been left unfilled for so many years on end in some regions — a situation that may be perpetuated in the years to come if, as is being done in the Pacific and Yukon Region, jobs are being sacrificed so that the savings on salaries can be converted into desperately needed operating funds. Given the extremely limited enforcement budgets and the unacceptably low number of enforcement officers which must cope with an ever-increasing workload, it is not surprising that Environment Canada is favouring voluntary approaches and the downloading of federal responsibilities on the provinces and territories.

157. The Committee wishes to stress that it is not against work-share agreements with the provinces and territories. Some have worked out very well. One example, cited by the Canadian Institute for Environmental Law and Policy (CIELAP) as a very good model of cooperative government action, is the Canada-Ontario Agreement respecting the Great Lakes Basin Ecosystem (COA). Noting, however, that the success of this Agreement was limited recently by budget cutbacks and the restructuring of the Ontario Ministry of Environment and Energy, CIELAP observed that even efficient, effective cooperative government action fails without adequate funding and coherent staffing policy.[86]

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85 Evidence, Meeting No. 37, 25 February 1998, at 16:40.

86 Canadian Institute for Environmental Law and Policy, *Harmonizing to Protect the Environment? An Analysis of the CCME Harmonization Process*, November 1996, p. 9.

158. The Committee agrees with this observation. Adequate funding and coherent staffing policy are fundamental elements if the job is to be well done.

159. In the Committee's opinion, the purposes served by effectively enforcing environmetal laws like CEPA and the pollution prevention provisions of the *Fisheries Act* cannot be over-emphasized. We are talking about providing Canadians with safe, clean air that they can breathe without being placed at risk. We are talking about providing Canadians with safe, clean water that they can drink and in which they can swim without being placed at risk. We are talking about providing Canadians with a safe, uncompromised atmosphere in which they can live without being placed at risk. On a less critical but nonetheless important level, we are talking about providing Canadians with healthy, green spaces, rich in biodiversity, that they can admire and enjoy and hand over to subsequent generations for the latter's benefit and enjoyment. If toxic and other harmful substances are not adequately regulated and kept in check through effective enforcement, all of these vital needs and interests are imperilled and might be irretrievably lost. That such might be the outcome must be resisted at all costs. The public interest demands no less.

160. The Committee deplores the fact that the cost-analysis studies prepared by the Department do not fully take into account, in a quantifiable way, the full benefits, whether health, social, ecological or economic, of environmental protection regulations for Canadians. We appreciate that methodologies for conducting such studies might not be fully developed. On the other hand, we believe that, at present, too much emphasis is placed on the short-term economic costs of implementing environmental legislation, and not enough on the overall medium- and long-term benefits. The Committee can think of a number of factors that should be counted as benefits, for example:

- benefits to public health and improved quality of life;
- benefits in terms of achieving long-term "sustainable development" commitments and practices;
- benefits to the economy generally (increased employment, research and development and export opportunities);
- benefits to the regulated industries (increased productivity, decreased litigation costs, improved public image, level playing field, export opportunities);
- benefits to insurance companies and consumers (decreased liability, greater risk management);
- benefits to all levels of government and local communities (lower health costs, increased tourism and recreation activities, increased yields and decreased disruptions for resource-based industries such as fisheries);

- benefits to all levels of government (improved international reputation, decreased vulnerability to environmental litigation).

161. Unless these and other benefits of regulatory action are considered, the Committee fears that the emphasis will continue to be placed exclusively on the short-term economic costs. This situation must be remedied.

Recommendation No. 22

The Committee recommends that the Minister of the Environment direct Environment Canada to include the full economic benefits of regulatory action in all cost/benefit analysis made in relation to the development and implementation of regulatory solutions to environmental problems.

162. It is clear that increased funding is required for Environment Canada's enforcement program. Adequate resources are lacking at present; the problem will only be magnified in the future if Environment Canada is serious about fulfilling its statutory mandate to preserve and enhance the quality of the natural environment. Environmental protection is of paramount importance to Canadians. As the Supreme Court of Canada noted, protecting the environment has become "one of the major challenges of our time".[87] It also stated that CEPA's provisions respecting the regulation of toxic substances served a public purpose of "superordinate importance."[88]

163. It is imperative, in the Committee's view, that the enforcement program be given additional resources. Having reached this conclusion, the Committee was undecided about whether, in light of the existing fiscal restraint, the additional funding should come from reallocations within the Department, or whether new, additional funding should be sought. In the end, the Committee decided that new funding for enforcement was needed. The Committee considers that the other core activities within the Department, such as science, wildlife protection, biodiversity, meteorology and climate change, are too important in their own right and should not be emasculated in order to subsidize the enforcement program. The Department has lost over one third of its budget in recent years. All programs have been pared to the bone. The public finances, however, are now under control and on the road to recovery. It is time for the Minister of the Environment to seize the opportunity, reaffirm her commitment to environmental protection and seek new money for the enforcement program.

Recommendation No. 23

The Committee recommends that the Minister of the Environment seek, and that the Government of Canada grant more resources to ensure the proper enforcement of the environmental legislation.

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87 *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, p. 16-17.

88 *R. v. Hydro-Québec*. Judgement rendered on 18 September 1997.

OTHER ISSUES: MERCURY CONTAMINATION

164. As mentioned earlier in this report, mercury contamination continues to be a major issue in Northern Quebec, particularly in terms of human health but also as an obstacle to any commercial activity based on fishery resources (both recreational and commercial fisheries).

165. The Committee understands that the land around James Bay has naturally high mercury levels, but that the presence of this contaminant has increased significantly due to the flooding of vast tracts of land needed to create the watershed for the La Grande hydroelectric development in northwestern Quebec. The Committee was informed that this watershed covers an area nearly 200,000 square kilometers, an area larger than the Maritime provinces. Eight reservoirs were created, occupying an area of nearly 20,000 square kilometers — an area that should be compared with the amount of agricultural land in Quebec. The fish communities in the new reservoirs display a dramatic increase in mercury concentrations, typically four to six fold.[89]

166. As the Committee pointed out in its 1995 review of CEPA, mercury in its natural state is transformed into methylmercury by microbial activity that accompanies the decomposition of organic matter. When land is flooded to create a reservoir, there is an increase in the transformation and transfer of mercury into the aquatic environment through the bacterial decomposition of the material inundated with water. The methylmercury is then absorbed by aquatic wildlife and thus passed on up the food chain.

167. Because this type of contamination is not the type of human-generated contamination usually regulated under CEPA, the Committee was concerned about the public health and environmental issues related to this type of mercury contamination and recommended in its 1995 report that this matter should be studied to determine whether it would be appropriate to regulate methylmercury under the Act.[90] The federal government did not respond to this recommendation. Nor has any further action been taken on this issue. The Committee, as presently constituted, continues to be concerned about methylmercury contamination and therefore reiterates its earlier recommendation.

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89 Brief presented to the Committee by the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, 11 March 1998, p. 3-4.

90 House of Commons Standing Committee on Environment and Sustainable Development, *It's About Our Health! Towards Pollution Prevention*, June 1995, Recommendation No. 81.

Recommendation No. 24

The Committee recommends that the Minister of the Environment conduct an in-depth study to determine whether methylmercury released into the aquatic environment as a result of the creation of reservoirs should be regulated under CEPA.

APPENDIX A

List of Witnesses

Organizations and Individuals	Meeting	Date
Environment Canada		
François Guimont, Assistant Deputy Minister, Environmental Protection Service	34	February 18, 1998
Albin Tremblay, Regional Director, Quebec Region	34	February 18, 1998
Ron Shimizu, Regional Director, Ontario Region	34	February 18, 1998
Ian McGregor, Director General, National Programs Directorate	34	February 18, 1998
Dale Kimmett, Director, Enforcement Branch	34	February 18, 1998
Fisheries and Oceans		
Gerry Swanson, Director General, Habitat Management & Environmental Science	34	February 18, 1998
Grant Pryznyk, Director, Conservation & Protection	34	February 18, 1998
Canadian Labour Congress		
Dick Martin, Secretary-Treasurer	35	February 19, 1998
David Bennett, National Director, Workplace Health, Safety and Environment	35	February 19, 1998
Canadian Environmental Law Association		
Paul Muldoon, Executive Director	36	February 24, 1998
Sierra Legal Defence Fund		
Jerry DeMarco, Staff Lawyer	36	February 24, 1998
Minister of the Environment		
Honourable Christine Stewart	37	February 25, 1998
Environment Canada		
Ian Glen, Deputy Minister	37	February 25, 1998
Patrick Hollier, Chief, Regulations and Strategy Division	37	February 25, 1998
Peter Krahn, Head, Inspections Section, Pacific and Yukon Region	37	February 25, 1998
David Aggett, Manager, Office of Enforcement, Atlantic Region	37	February 25, 1998
Claude Gonthier, Chief, Inspections and Investigations, Quebec Region	37	February 25, 1998
David Pascoe, Manager, Emergencies and Enforcement Division, Ontario Region	37	February 25, 1998
Mike Labossière, Head, Enforcement and Compliance, Prairie and Northern Region	37	February 25, 1998
Guy Martin, Chief, Inspections and Investigations	37	February 25, 1998
Nadine Levin, Senior Policy Officer, CEPA Office	37	February 25, 1998

Organizations and Individuals	Meeting	Date
Environment Canada		
Ian Glen, Deputy Minister	38	February 26, 1998
Patrick Hollier, Chief, Regulations and Strategy Division	38	February 26, 1998
Guy Martin, Chief, Inspections and Investigations	38	February 26, 1998
Nadine Levin, Senior Policy Officer, CEPA Office	38	February 26, 1998
David Aggett, Manager, Office of Enforcement, Atlantic Region	38	February 26, 1998
Claude Gonthier, Chief, Inspections and Investigations, Quebec Region	38	February 26, 1998
David Pascoe, Manager, Emergencies and Enforcement Division, Ontario Region	38	February 26, 1998
Mike Labossière, Head, Enforcement and Compliance, Prairie and Northern Region	38	February 26, 1998
Peter Krahn, Head, Inspections Section, Pacific and Yukon Region	38	February 26, 1998
Canadian Pulp and Paper Association		
Fiona Cooke, Vice-President, Government Relations and Secretary	39	March 10, 1998
Lucie Desforges, Director, Environment and Energy	39	March 10, 1998
Claude Roy, Senior Director, Environment, Health and Safety	39	March 10, 1998
Quebec Environmental Law Centre		
Franklin Gertler, Vice-President	39	March 10, 1998
Grand Council of the Crees (Eeyou Istchee)		
Brian Craik, Director, Federal Relations	40	March 11, 1998
Alan Penn, Scientific Adviser	40	March 11, 1998
Conservation Council of New Brunswick		
Juli Abouchar, Executive Director	41	March 17, 1998
Environment Canada		
Ian Glen, Deputy Minister	42	March 26, 1998
François Guimont, Assistant Deputy Minister, Environment Protection Service	42	March 26, 1998
Dale Kimmett, Director, Enforcement Branch	42	March 26, 1998
Patrick Hollier, Chief, Regulations and Strategy Division	42	March 26, 1998
Guy Martin, Chief, Inspections and Investigations	42	March 26, 1998
Claude Gonthier, Chief, Inspections and Investigations, Quebec Region	42	March 26, 1998
Steve Mongrain, CEPA Office	42	March 26, 1998

APPENDIX B

List of Briefs

"Centre québécois du droit de l'environnement"

Franklin Gertler
Vice-President

Canadian Environmental Law Association

Paul Muldoon
Counsel

Canadian Labour Congress

Dick Martin
Secretary-Treasurer

Canadian Pulp and Paper Association

Fiona Cooke
Vice-President

Conservation Council of New Brunswick

Juli Abouchar

Grand Council of the Crees of Quebec (Eeyou Istchee)

Brian Craik
Director of Federal Relations

Sierra Legal Defence Fund

Jerry DeMarco
Staff Lawyer

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, your Committee requests the Government to table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Environment and Sustainable Development (*Meeting No. 52*) is tabled.

Respectfully submitted,

Hon. Charles Caccia, P.C.
Chair.

Zero Credibility!

Bloc Québécois Dissenting Opinion on the Enforcement of Canada's Pollution Laws

The Bloc Québécois is grateful to the members of the Standing Committee on Environment and Sustainable Development for having updated the chronic shortcomings in the application of the *Canadian Environmental Protection Act* (CEPA) and of certain provisions in the *Fisheries Act*. The majority report explains clearly why the federal Department of the Environment is incapable at this time of protecting public health and the environment.

(a) A paralyzed Department

For the Bloc Québécois, two serious problems undermine the very credibility of the Department and its ability to enforce environmental legislation: a chronic lack of human and financial resources and the possibility of unacceptable interference by senior officials in the decision-making process. For example, it is with stupefaction that we learned that, in Quebec, only half of the regulations under the authority of the federal government will be applied in 1998-99, because of a shortage of resources (paragraph 47 of the majority report). In addition, public servants revealed a number of cases of "undue managerial intervention or interference" in the past (paragraphs 95 and 97). During the Committee's hearings, one official even refused to answer our questions on this subject, for fear of reprisals (paragraph 96). The federal government has been aware of this situation since at least 1995. Why has it never made any changes to the decision-making structure, which is conducive to this kind of interference? In this regard, as with underfunding, there is indisputably a flagrant lack of political will on the part of the Liberal government when it comes to environmental protection.

(b) Lack of transparency

Not only is this government incapable of applying its own environmental laws properly, but in addition Environment Canada seems to have done everything in its power to hamper the work of the Standing Committee, which was trying to shed light on the Department's failures. First, the Minister of the Environment came, on two hours' notice, to try to explain to the members of the Committee that her officials did not have to answer all their questions. Then the Department sent the Committee erroneous information (paragraphs 35 and 36) and dubious or inaccurate data (paragraphs 37 and 38), or quite simply refused to answer, claiming not to have basic information (paragraphs 40 to 42). For

the Bloc Québécois, this situation indicates either incompetence on the part of Environment Canada, which has no means of evaluating its own enforcement program, or a desire to conceal from the elected representatives of the people the Department's many weaknesses. In either case, the very credibility of the Department is in question. That is why we support the first six recommendations in the majority report, which in various ways require greater transparency from the Department.

(c) Jurisdictional conflicts

In December 1997, the Committee tabled a report on the effort to harmonize environmental management in Canada.[1] That report questioned the existence of overlap between provincial and federal areas of jurisdiction. In the current report, the members of the Committee now deplore the fact that "jurisdictional conflicts" are allowing concerns accused of polluting to escape scot-free (paragraphs 72 to 77). The Bloc Québécois has never doubted the existence of such conflicts between the federal and provincial governments in the area of the environment. It is of course unacceptable that polluters should be able to take advantage of this confusion to avoid punishment. However, the solution to the problem does not lie in maintaining this double structure, as Recommendation 8(*a*) and (*b*) of the majority report proposes. We propose instead that a single act apply in order to prevent these conflicts of jurisdiction. This act should be a provincial act, as prescribed by the principle of environmental harmonization.

(d) Contradictory recommendations

We also reject Recommendation 16(*a*), which would lead to systematic overlap in every instance where responsibility for a provision of the CEPA devolved on the provinces. In our view, Recommendation 16(*a*) contradicts Recommendation 16(*b*). This latter recommendation calls on Environment Canada to provide "efficient and transparent mechanisms for monitoring, reviewing, reporting and resolving disputes [. . .] in the agreements so that the parties are compelled to fulfill their commitments and obligations". We support a recommendation of this kind. However, if there are effective mechanisms for ensuring that the parties fulfill their commitments and obligations, why the insistence in Recommendation 16(*a*) on the federal government's retaining "full authority and accountability, as well as the appropriate means and resources"? This recommendation is based on the premise that decentralization of federal powers to the provinces in the area of the environment represents a threat to environmental protection in Canada. We reject this premise, which does not stand up under analysis. Before arrogating to itself even more

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1 House of Commons Standing Committee on Environment and Sustainable Development, *Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment*, December 1997.

environmental powers, the federal government has an obligation to restore the credibility of its own Department of the Environment.

In this context, it is astonishing to note that the Liberal government recently tabled the centralizing Bill C-32. This new *Canadian Environmental Protection Act* would give even more legislative and regulatory powers to the federal government at a time when that government is already incapable of adequately protecting public health and the environment.

Bernard Bigras, M.P., Rosemont
Gérard Asselin, M.P., Charlevoix

MINUTES OF PROCEEDINGS

WEDNESDAY, MAY 13, 1998
(Meeting No. 52)

[*Text*]

The Standing Committee on Environment and Sustainable Development met in camera at 3:50 o'clock p.m., this day, in Room 307, West Block, the Chair, Charles Caccia, presiding.

Members of the Committee present: Bernard Bigras, Charles Caccia, Aileen Carroll, Rick Casson, Yvon Charbonneau, Bill Gilmour, David Pratt.

Acting Members present: John Maloney for Roger Gallaway and Derek Lee for Sarkis Assadourian.

In attendance: From the Research Branch of the Library of Parliament: Monique Hébert, Christine Labelle, Research Officers.

Pursuant to Standing Order 108(2), the Committee resumed its consideration of the enforcement of the provisions of the Canadian Environmental Protection Act and the enforcement of the pollution prevention provisions of the Fisheries Act including related regulations and administrative agreements (*See Minutes of Proceedings, dated Thursday, February 5, 1998, Meeting No. 29*).

The Committee resumed consideration of a draft report.

It was agreed, — That the Committee adopt the draft report, to be entitled Enforcing Canada's Pollution Laws: The Public Interest Must Come First!, as its Third Report.

It was agreed, — That the Chair be authorized to make such editorial and typographical changes as necessary without changing the substance of the Report and to choose a cover page.

It was agreed, — That the Chair be authorized to present the Report to the House on Monday, May 25, 1998.

It was agreed, — That, pursuant to Standing Order 108(1)(*a*), the Committee authorize the printing of brief dissenting opinions, to be submitted in the two official languages to the Clerk by noon on Tuesday, May 19, 1998.

It was agreed, — That, pursuant to Standing Order 109, the Government be requested to table a comprehensive response.

It was agreed, — That 1,100 English and 300 French copies of the Report be printed.

It was agreed, — That a press conference be organized immediately after the Report has been tabled in the House on May 25, 1998.

The Committee discussed its future business.

It was agreed, — That, with regard to the Committee's Order of Reference from the House of April 28, 1998, on Bill C-32, An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development, the Committee adopt a list of witnesses and hold hearings with witnesses three times a week, beginning on Tuesday, June 2, 1998.

It was agreed, — That the Committee host a confidential preview of the Annual Report of the Commissioner of Environment and Sustainable Development and a meeting on the Report with the Commissioner as witness on Tuesday, May 26, 1998.

At 5:15 o'clock p.m., the Committee adjourned to the call of the Chair.

Stephen Knowles
Clerk of the Committee

Publications Service